R33. Administrative Services, Purchasing and General Services.
R33-5. Other Standard Procurement Processes.
R33-5-101. Request for Information.

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

R33-5-104. Small Purchases.

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

(1) Small Purchase thresholds:

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

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

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

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

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

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

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

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

(3) When using this rule in conjunction with an approved vendor list, the procurement unit shall select design professional firms identified in Subsection (2) from the approved vendor list using one or more of the following methods:

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

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

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

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

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

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

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

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

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

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

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

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

(f) All other applicable laws and rules.

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

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

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

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

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

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

(6) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors and contractors identified in Subsections (4) and (5) from the approved vendor list using one or more of the following methods:

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

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

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

(d) Invite all contractors on the approved vendor list to submit quotes, applicable to Subsection (5) only; or

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

(7) Under this rule, the chief procurement officer or head of a procurement unit with independent procurement authority shall procure small construction projects costing more than $100,000 up to a maximum of $2.5 million through a two-stage process. Stage one, qualify vendors under Section 63G-6a-410 and develop an Approved Vendor List under Section 63G-6a-507. Stage two, issue to all vendors, qualified and approved in stage one, an invitation for bids or request for proposals and use the procedures set forth therein to award a contract.

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

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

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

Penalties;

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

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

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

(f) All other applicable laws and rules.

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

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

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

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

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

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

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

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

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

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

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

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

(f) All other applicable laws and rules.

(7) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors from the approved vendor list using one or more of the following methods:

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

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

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

(d) Invite all vendors on the approved vendor list to submit quotes; or

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

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

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

(2) After reviewing the qualifications of a minimum of two professional service providers or consultants, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may obtain professional services or consulting services:

(a) up to a maximum of $50,000 by direct negotiation; or

(b) over $50,000 up to a maximum of $100,000 by obtaining a minimum of two quotes.

(3) When using this rule in conjunction with an approved vendor list, the procurement unit shall select contractors from the approved vendor list using one or more of the following methods:

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

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

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

(d) Invite all vendors on the approved vendor list to submit quotes; or

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

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

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

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

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

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

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

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

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

(g) All other applicable laws and rules.

R33-5-201. Approved Vendor List.

In accordance with the provisions set forth in Section 63G-6a-507, a procurement unit may establish an approved vendor list and award contracts using the following methods and all associated laws and rules:

(a) Section 63G-6a-113 and 507(6)(b), Contract Award Based on Established Terms;

(b) Section 63G-6a-609, Multiple Stage Bidding Process;

(c) Section 63G-6a-710, Multiple Stage RFP Process;

(d) Section 63G-6a, Part 15, Design Professional Services; or

(e) Section 63G-6a-506, Small Purchases.

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

(1) In accordance with Section 63G-6a-113 and 507(6)(b), a procurement unit may award a contract to a vendor on an

approved vendor list at an established price based on:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be disqualified and removed from the approved vendor list.

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

(a) Make a written finding that:

(i) Describes the performance rating system;

(ii) Identifies the minimum performance rating threshold; and

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

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

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

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

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

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

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

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

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

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

KEY: government purchasing, procurements, request for information

August 22, 2016 63G-6a

Notice of Continuation July 8, 2014

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

Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

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

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

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

(b) instructions for submitting price.

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

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

(b) approving content of attachments;

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

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

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

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

R33-7-103. Multiple Stage RFP Process.

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

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

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

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

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

(1) Definitions:

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

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

(i) The lowest cost proposal submitted;

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

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

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

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

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

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

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

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

(4) Except as provided in Section 63G-6a-707(8), the following process shall be used to evaluate proposals and award a contract under this multiple stage process:

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

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

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

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

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

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

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

(iv) Cost shall be evaluated in accordance with Section 63G-6a-707(5)(b)(i); and

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

(c) During stage three, the evaluation committee shall score the proposal of each offeror qualified in stage two, in

response to the technical evaluation criteria set forth in the RFP, without having access to any information relating to the cost or the scoring of the cost. Technical criteria shall be scored in accordance with Section R33-7-704 or rules established by the applicable rulemaking authority;

(d) During stage four, the individual assigned by the issuing procurement unit, who is not a member of the evaluation committee, shall add the cost scores to the evaluation committee's final recommended technical scores to derive the total combined score for each proposal in accordance with the process set forth in Section 63G-6a-707(5)(a) through (c);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) that are determined to be excessive;

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

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

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

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

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

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

R33-7-105. Protected Records.

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

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

(c) Other Protected Records under GRAMA.

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

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

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

R33-7-106. Notification.

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

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

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

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

(1) If an offeror submits a proposal that contains

information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

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

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

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

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

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

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

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

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

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

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

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

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

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

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

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

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

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

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

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

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

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

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

(i) the attendance log;

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

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

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

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

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

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

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

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

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

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a proposal after the time for submission of a proposal has expired as set forth in Section 63G-6a-704(2).

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

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

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

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

R33-7-501. Evaluation of Proposals.

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

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

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

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

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

R33-7-501.5. Minimum Score Thresholds.

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

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

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

(i) Minimum scores for each evaluation category;

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

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

(b) Thresholds may not be based on:

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

(ii) A predetermined number of offerors.

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

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

R33-7-601. Best and Final Offers.

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

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

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

(i) no single proposal addresses all the specifications;

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

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

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

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

(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.

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

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

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

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

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

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

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

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

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

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

(a) comply with all public notice requirements provided in Section 63G-6a-112;

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

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

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

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

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

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

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

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

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

(iii) overhead and profit for the construction phase.

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

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

R33-7-701.1. Cost-Benefit Analysis.

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

excluding any renewal periods.

R33-7-702. Only One Proposal Received.

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

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

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

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

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

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

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

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

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

(i) the person submitting the proposal is responsible;

(ii) the proposal is responsive; and

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

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

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

(i) Explain the evaluation and scoring process;

(ii) Discuss requirements and prohibitions pertaining to:

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

(B) financial conflicts of interest as set forth in Section R33-24-205;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) resolve any factual disagreements;

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

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

(b) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that a proposal be rejected for being non-responsive, not responsible, not meeting the mandatory minimum requirements, or not meeting any applicable minimum score threshold.

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

(d) In order to score proposals fairly, an evaluation committee member must be present at all evaluation committee

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

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

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

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

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

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

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

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

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

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

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

(9) The evaluation committee may, with approval from the issuing procurement unit, request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP, under the circumstances set forth in Section 63G-6a-707.5 and Section R33-7-601.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Points shall be awarded to each applicable evaluation category as set forth in the RFP, including but not limited to:

(a) Technical specifications;

(b) Qualifications and experience;

(c) Programming;

(d) Design;

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

(f) Quality or suitability for a particular purpose;

(g) Financial solvency;

(h) Management and methodological plan; and

(i) Other requirements specified in the RFP.

(3) Scoring Methodology:

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

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

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

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

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

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

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

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

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

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

(b) Evaluators may not act on their own or in concert with

another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.

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

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

R33-7-802. Publicizing Awards.

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

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

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

(c) the rankings of the proposals;

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

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

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

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

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

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

(c) non-public financial statements; and

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

KEY: government purchasing, request for proposals, standard procurement process
August 22, 2016 63G-6a
Notice of Continuation July 8, 2014

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

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

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

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

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

R58-17-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) "Aquatic animal processing plant" means a facility pursuant to R58-17-13(G) and (H), and R58-17-17 used for receiving whole dead, eviscerated fresh or frozen salmonids or

other live and dead aquatic animals as approved on the COR for processing.

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

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

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

(23)(a) "Marine aquatic animal" means a member of any species of fish, mollusk or crustacean that spends its entire life cycle in a marine environment.

(b) "Marine aquatic animal" does not include:

(i) anadromous aquatic animal species;

(ii) species that temporarily or permanently reside in brackish water; and

(iii) species classified as invasive or nuisance by state or federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R58-17-3. Penalties.

Any violation of or failure to comply with any provision of this rule, R657-59 or R657-16 or any specific requirement contained in a certificate of registration or entry permit issued pursuant to this rule, R657-59 or R657-16 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration or denial of future certificates of registration pursuant to Subsections 4-2-2(1)(f) and 4-2-15(1), as determined by the Commissioner of Agriculture and Food and pursuant to Sections 23-19-9, 23-20-4, and 23-13-11, as determined by the Director of the Division of Wildlife Resources.

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

(A) Activities requiring a COR:

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

(a) Operate an aquaculture facility.

(b) Operate a fee-fishing facility.

(c) Operate a aquatic animal processing plant.

(d) Broker aquatic animals.

(2) A certificate of registration or health approval is not required to import, possess, or transfer a live marine aquatic animal, provided it is:

(a) imported and possessed for the singular purposes of immediate human consumption;

(b) possessed no longer than 30 days from the date of importation;

(c) acquired from a lawful source and documentation of purchase is retained;

(d) not released in any water source, including sewer systems; and

(e) imported and possessed in compliance with applicable state and federal laws, including the importation and possession

requirements in R657-3-11(8).

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

(a) public aquaculture facilities;.

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

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

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

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

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

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

R58-17-5. Species Allowed.

(A)(1) Pursuant to Division of Wildlife Resources rules R657-3, R657-59, R657-16, and Utah Code sections 23-15-10 and 23-13-5, only those species authorized by the Division or the Wildlife Board may be imported, possessed, or transported in conjunction with the authorized activity.

(2) The species, strains, and reproductive capabilities of aquaculture product that may be stocked in fee fishing facilities are generally described in R657-59-16(3) and (4).

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

(2) Notwithstanding the site restrictions described in R657-59-16(3) and (4), the Department may authorize stocking in fee fishing facilities after formally coordinating with the Division on a site suitability for areas generally closed to stocking aquaculture product.

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

R58-17-6. Qualifying Waters.

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

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

R58-17-7. Screens Required.

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

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

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

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

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

(A) Application process.

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

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

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

(b) The Division will review COR applications to ensure site suitability, allowable species, and potential impact to adjacent aquatic wildlife populations, consistent with this rule and state code.

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

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

(B) Renewal process.

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

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

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

(C) CORs are not transferable.

R58-17-9. Reporting Aquatic Animal Diseases.

Persons involved in aquaculture and being regulated by this rule, R657-59, or R657-16, having knowledge of the existence in the state of any of the diseases currently on the pathogen list, Subsection R58-17-15(D)(2), (3), and (4), shall report it to the Department, Fish Health Program or the

Division, Aquatics Section. The Department or Division will follow the Procedures for the Timely Reporting of Pathogens and the Emergency Response Procedures established by the Board. All confirmed findings of pathogens pursuant to R58-17-15(D)(2), (3), and (4), determined from such incidents or from inspections or diagnostic work initiated by the Department or the Division, will be reported to the Board.

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

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

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

(2) If the Department has reasonable evidence that the contagion is still present pursuant to R58-17-11, then quarantine, closure, or other measures such as decontamination of the facility and equipment, destruction of aquatic animals, etc. may be imposed. Such measures will be in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.

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

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

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

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

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

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

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

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

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

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

R58-17-12. Statement of Variances.

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

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

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

(C) The variance is documented appropriately.

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

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

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

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

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

(4) For international shipments or an animal with international origins, a certificate of veterinary inspection from the source must be obtained by the importer indicating a negative record of testing by OIE reference labs for prohibited pathogens pursuant to R58-17-15(D)(2) and (3), a negative

record of other OIE-listed pathogens affecting the aquatic animals to be imported, and that known nuisance species are not found in the water source. In addition, written authorization from the US Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) for the importation must be included.

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

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

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

(E) To import or sell live grass carp (Ctenopharyngodon idella), the fish must be verified as being triploid (sterile) by the National Triploid Grass Carp Inspection and Certification Program. A U.S. Fish and Wildlife Service triploid verification form must be obtained from the supplier as required in R657-16-7. Both this form and the Department's statement verifying treatment or testing for Asian tapeworm must be on file with the Department prior to shipment or stocking of the fish. Copies of the entry permit, treatment or testing statement for Asian tapeworm, and triploid verification forms must accompany the fish during transit. The statement verifying treatment or testing is also required for all aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm.

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

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

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

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

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

(L) An import permit or certificate of veterinary inspection is not required to import a live marine aquatic animal into the state, provided it is:

(1) imported and possessed for the singular purposes of immediate human consumption;

(2) possessed no longer than 30 days from the date of importation;

(3) acquired from a lawful source and documentation of purchase is retained;

(4) not released in any water source, including sewer systems; and

(5) imported and possessed in compliance with applicable state and federal laws, including the importation and possession requirements in R657-3-11(8).

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

(A) Buying aquatic animals:

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

(B) Selling aquatic animals:

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

(C) Transporting aquatic animals:

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

(2) All transfers or shipments of live aquatic animals within Utah, except ornamental fish and marine aquatic animals as provided in R58-17-4(2), unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), must be accompanied by documentation of the source and destination, including:

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

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

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

(d) Date of transaction.

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

hours. Proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.

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

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

(D) Brokers:

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

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

R58-17-15. Aquatic Animal Health Approval.

(A) Live aquatic animals, except ornamental fish and marine aquatic animals as provided in R58-17-4(2), unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be acquired, purchased, sold or transferred only from sources which have been granted health approval by the Department pursuant to this section. This applies to separate facilities owned by the same individual and to both in-state and out-of-state facilities.

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

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

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

(B) Basis for Health Approval:

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

(2) All lots of aquatic animals shall be sampled.

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

the brood aquatic animals if the following conditions exist:

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

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

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

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

(6) Health approval for non-salmonid aquatic animals is based on specific pathogen testing for that identified aquatic animal as per R58-17-15(D). This shall require minimum sampling at the 95% confidence level, assuming a 5% carrier prevalence for the prohibited pathogens, pursuant to R58-17-15(D)(2) and (3). In addition, the agency having responsibility pursuant to R58-17-15(A)(1) and (2) will discuss the disease history of the facility with the producer, and then contact acceptable fish health professionals to identify other existing or potential disease problems.

(a) An exemption for a statistical attribute sampling of each lot of fish may be granted for non-salmonid species that reside in the same water source throughout their life history and are of equal pathogen susceptibility. In which case, a representative composite sample of 60 fish.

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

(C) Approval Procedures:

(1) Applicable to all aquatic animals.

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

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

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

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

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

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

(2) Applicable to salmonid aquatic animals:

(a) For initial approval of new facilities, two inspections

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

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

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

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

(3) Applicable to non-salmonid aquatic animals:

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

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

(D) Prohibited and reportable pathogen list:

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

(2) Emergency prohibited pathogens.

(a) Infectious hematopoietic necrosis virus (IHNV).

(b) Infectious pancreatic necrosis virus (IPNV).

(c) Viral hemorrhagic septicemia virus (VHSV).

(d) *Oncorhynchus masou virus (OMV).

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

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

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

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

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

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

(3) Prohibited pathogens.

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

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

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

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

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

(f) Emerging aquatic animal pathogens the State Veterinarian considers a threat to state aquatic resources, including any filterable agent or agent of clinical significance as determined by the Board.

(4) Reportable pathogens.

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

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

(c) Centrocestus formosanus**.

(d) Any emerging aquatic animal pathogens the State Veterinarian considers a threat to the state aquatic resources including any filterable agent or agent of clinical significance as determined by the Board.

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

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

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

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

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

(2) CORs and entry permits.

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

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

R58-17-17. Aquaculture Facilities, Aquatic Animal Processing Plants, Brokers.

(A) COR required:

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

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

The operator of an aquaculture facility with health approval may take the aquatic animals as authorized on the COR from the facility at any time and offer them for sale. Within Utah, live aquatic animals can only be sold to other facilities which have a valid COR for that species. Aquatic animal processing plants

dealing with salmonids shall neither hold nor sell live salmonids.

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

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

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

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

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

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

(5) Dates of transactions.

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

(E) Annual reports required:

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

(1) The report will contain:

(a) Names, addresses, phone numbers, COR numbers and health approval numbers of sources.

(b) Number, size and weight by species.

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

(d) Dates of transactions.

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

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

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

(F) Fees assessed:

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

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

R58-17-18. Fee-Fishing Facilities.

(A) COR required:

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

(B) Live sales or transfers prohibited:

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

(C) Fishing licenses not required:

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

(D) Receipts required:

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

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

(2) Date caught.

(3) Species and number of fish.

(E) Annual report required:

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

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

(2) Number, size and weight by species.

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

(F) Fees assessed and annual report deadline:

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

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

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

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

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

R58-17-20. Classification of Pathogens.

TABLE

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

Pathogen	Classification	Species	Inspection Requirement/ Comment
Infectious Hematopoietic Necrosis Virus (IHNV)	Emergency Prohibited	Salmonids	
Infectious Pancreatic Necrosis Virus (IPNV)/Aquatic	Emergency Prohibited	All susceptible hosts	May be isolated from many species of aquatic organisms

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

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

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

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

Yersinia ruckeri (Enteric redmouth Disease)	Reportable	Any fresh water fish	No inspection requirement in Utah
Aeromonas salmonicida (furunculosis disease)	Reportable	Any fresh water fish	No inspection requirement in Utah
Centrocestus Formosanus	Reportable	Any fresh water fish	No inspection requirement in Utah

R58-17-21. Fish Health Policy Board Electronic Meetings.

(A) Utah Code Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Fish Health Policy Board meetings by electronic means.

(B) The following provisions govern any meeting at which one or more Fish Health Policy Board members appear telephonically or electronically pursuant to Section 52-4-207:

(1) If one or more board members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(a) the board members participating in the meeting electronically and how they will be connected to the meeting;

(b) the anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(c) the meeting agenda; and

(d) the date and time of the meeting.

(2) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours prior to the meeting:

(a) at the anchor location;

(b) on the Utah Public Notice Website; and

(c) to at least one newspaper of general circulation within the state or to a local media correspondent.

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

(4) When notice is given of the possibility of a board member appearing electronically or telephonically, any board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the board.

(a) At the commencement of the meeting, or at such time as any board member initially appears electronically or telephonically, the chair should identify for the record all those who are appearing telephonically or electronically.

(b) Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.

(5) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

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

R58-17-22. Fish Health Policy Board Emergency Meetings.

(A) There are times when, due to the necessity of considering matters of an emergency or urgent nature, the public

notice provisions of Sections 52-4-202(1) cannot be met. Pursuant to Section 52-4-202(5), the notice requirements in Section 52-4-202(1) may be set aside when unforeseen circumstances require the Fish Health Policy Board to meet and consider matters of an emergency or urgent nature.

(B) The following procedure shall govern any emergency meeting:

(1) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the board of the proposed meeting and a majority of the convened members vote in the affirmative to hold the emergency meeting.

(2) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(a) Posting of the date, time, and place of the meeting and the topics to be considered:

(i) at the offices of the department;

(ii) on the department's web page;

(iii) on the Utah Public Notice Website; and

(iv) at the location where the emergency meeting will be held.

(b) If members of the board appear electronically or telephonically, notice shall comply with the requirements of R58-17-21(B) to the extent practicable.

(3) In convening the emergency meeting and voting in the affirmative to hold the meeting, the board shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice provisions of Utah Code Section 52-4-202 could not be followed.

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R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license:

(a) issued to a licensee in error, such as where a license is issued to an applicant:

(i) whose payment of the required application fee is dishonored when presented for payment;

(ii) who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards;

(iii) who has been issued the wrong classification of licensure; or

(iv) due to any other error in issuing a license; or

(b) not issued erroneously, but where subsequently the licensee fails to maintain the ongoing qualifications for licensure, when such failure is not otherwise defined as unprofessional or unlawful conduct.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(5) "Conditional licensure" means an interim non-adverse licensure action, in which a license is issued to an applicant for initial, renewal, or reinstatement of licensure on a conditional basis in accordance with Section R156-1-308f, while an investigation or audit is pending.

(6) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(7)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(8) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(13) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

(15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the

licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors may not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

(18) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(19) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).

(20) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(21) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(22) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(23) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(24) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(25) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

(26) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(27) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

(28) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(29) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(30) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(32) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

R156-1-102a. Global Definitions of Levels of Supervision.

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

R156-1-103. 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.

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a) and (b), the Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the Director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division Regulatory and Compliance Officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division Regulatory and Compliance Officer is unable to so serve for any reason, a replacement specified by the Director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the Director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, a department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the Director or Commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the Director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The Director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(b), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i), (l), (m), (o), (p), and (q), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.

(b) Bureau Managers or Program Coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d),(f), (h), (j), (n) and R156-46b-202(2)(b)(iii).

(iii) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The Division Regulatory and Compliance Officer or other citation hearing officer designated in writing by the Director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer to serve as the factfinder for formal adjudicative proceedings involving the Residence Lien Recovery Fund.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The Construction Services Commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the Commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the Commission as a presiding officer shall require the concurrence of the Director.

(ii) Unless otherwise specified in writing by the Construction Services Commission, the Commission is designated as the presiding officer:

(A) for informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

(B) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(C) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the Commission may accept, modify or reject the recommended order.

(iii) If the Construction Services Commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the Construction Services Commission shall address all issues before the Commission and shall be based upon the record developed in an adjudicative proceeding conducted by the Commission. In cases in which the Commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the Commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the Commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The Construction Services Commission or its designee shall submit adopted orders to the director for the Director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the Director.

(vi) In accordance with Subsection 58-55-103(10), if the Director or the Director's designee refuses to concur in an adopted order of the Construction Services Commission or its designee, the Director or the Director's designee shall return the order to the Commission or its designee with the reasons set forth in writing for refusing to concur. The Commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return. The Director or the Director's designee shall consider the Commission's resubmission of an adopted order and either concur rendering the order final, or refuse to concur and issue a final order, within 90 days of the date of the initial recommended order. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the Commission or its designee and the Director or the Director's designee to resolve the reasons for the Director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the Construction Services Commission and concurred in by the Director or the Director's designee, or nonconcurred in by the Director or the Director's Designee, and issued by the Director or the Director's designee, may be appealed by filing a request for agency review with the Executive Director or the Director's designee within the Department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The Director or the Director's designee is designated as the presiding officer for the concurrence role, except where the Director or the Director's designee refuses to concur and issues the final order as provided by Subsection (a), on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the Construction Services Commission, a Department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the Commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the Construction Services Commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (d),(h), and (n).

(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission

in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the Commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

(3)(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.

(4)(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.

(5) There shall appear on all investigative subpoenas a certificate of service.

(6) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

(a) A motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than ten days after service of the investigative subpoena.

(b) A response by the Division to a motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than five business days after receipt of a motion to quash or modify an investigative subpoena.

(c) No final reply by the recipient of an investigative subpoena who files a motion to quash or modify shall be permitted.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the Division.

(7) Unless otherwise approved by the Division, peer or advisory committee meetings shall be held in the building occupied by the Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The Division shall provide a Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the Division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the Division's Internet Renewal System.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

(1) This section applies in circumstances where an applicant or licensee:

(a) is not automatically disqualified from licensure pursuant to a statutory provision; and

(b)(i) has history that reflects negatively on the person's moral character, including past unlawful or unprofessional conduct; or

(ii) has a mental or physical condition that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare.

(2) In a circumstance described in Section (1), the following factors are relevant to a licensing decision:

(a) aggravating circumstances, as defined in Subsection R156-1-102(2);

(b) mitigating circumstances, as defined in Subsection R156-1-102(17);

(c) the degree of risk to the public health, safety or welfare;

(d) the degree of risk that a conduct will be repeated;

(e) the degree of risk that a condition will continue;

(f) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(g) the length of time since the last conduct or condition has occurred;

(h) the current criminal probationary or parole status of the applicant or licensee;

(i) the current administrative status of the applicant or licensee;

(j) results of previously submitted applications, for any regulated profession or occupation;

(k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(m) psychological evaluations; or

(n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-303. Temporary Licenses in Declared Disaster or Emergency.

(1) In accordance with Section 53-2a-1203, persons who provide services under this exemption from licensure, shall within 30 days file a notice with the Division as provided under Subsection 53-2a-1205(1) using forms posted on the Division internet site.

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure as provided in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet all the normal requirements for occupational or professional licensure under this title, unless:

(a) prior to practicing after the declared disaster the person is issued a temporary license under the provisions of Subsection 58-1-303(1)(c); or

(b) the person qualifies under another exemption from licensure.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) architect;
(b) audiologist;
(c) certified public accountant emeritus;
(d) certified court reporter;
(e) certified social worker;
(f) chiropractic physician;
(g) clinical mental health counselor;
(h) clinical social worker;
(i) contractor;
(j) deception detection examiner;
(k) deception detection intern;
(l) dental hygienist;
(m) dentist;
(n) dispensing medical practitioner - advanced practice registered nurse;
(o) dispensing medical practitioner - physician and surgeon;
(p) dispensing medical practitioner - physician assistant;
(q) dispensing medical practitioner - osteopathic physician and surgeon;
(r) dispensing medical practitioner - optometrist;
(s) dispensing medical practitioner - clinic pharmacy;
(t) genetic counselor;
(u) health facility administrator;
(v) hearing instrument specialist;
(w) landscape architect;
(x) licensed advanced substance use disorder counselor;
(y) marriage and family therapist;
(z) naturopath/naturopathic physician;
(aa) optometrist;
(bb) osteopathic physician and surgeon;
(cc) pharmacist;
(dd) pharmacy technician;
(ee) physician assistant;
(ff) physician and surgeon;
(gg) podiatric physician;
(hh) private probation provider;
(ii) professional engineer;
(jj) professional land surveyor;
(kk) professional structural engineer;
(ll) psychologist;
(mm) radiology practical technician;
(nn) radiologic technologist;
(oo) security personnel;
(pp) speech-language pathologist;
(qq) substance use disorder counselor; and
(rr) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division.

Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years
Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security	March 31	odd years
C.P.A. Firm	September 30	even years
Certified Court Reporter	May 31	even years
Certified Dietitian	September 30	even years
Certified Medical Language Interpreter	March 31	odd years
Certified Nurse Midwife	January 31	even years
Certified Public Accountant	September 30	even years
Certified Social Worker	September 30	even years
Chiropractic Physician	May 31	even years
Clinical Mental Health Counselor	September 30	even years
Clinical Social Worker	September 30	even years
Construction Trades Instructor	November 30	odd years
Contractor	November 30	odd years
Controlled Substance License	Attached to primary license renewal	
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator	November 30	even years
Dental Hygienist	May 31	even years
Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance Use Disorder Counselor	May 31	odd years
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years
Nail Technology School	September 30	odd years
Naturopath/Naturopathic Physician	May 31	even years
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years
Optometrist	September 30	even years
Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
Outfitter/Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
Pharmacist	September 30	odd years
Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years
Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber	January 31	even years
Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with

specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Funeral Service Intern licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(i) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(j) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

(k) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(l) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee

continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(2) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(3) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(4) Upon completion of the audit or investigation, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(5) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed, renewed, or reinstated shall include the following:

(a) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(b) the Division's file or other reference number of the audit or investigation; and

(c) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested.

R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

(c) pay the established license fee for a new applicant for licensure.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(b) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(c) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(d) pay the established license renewal fee and the reinstatement fee.

R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary

licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the

examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

R156-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing;

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference;

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference; or

(8) violating any term, condition, or requirement contained in a "diversion agreement", as defined in Subsection 58-1-404(6)(a).

R156-1-502. Administrative Penalties.

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE

FINE SCHEDULE	
FIRST OFFENSE	
Violation	Fine
58-1-501(1)(a)	$ 500.00
58-1-501(1)(c)	$ 800.00
58-1-501(2)(o)	$ 0 - $250.00
SECOND OFFENSE	
58-1-501(1)(a)	$1,000.00
58-1-501(1)(c)	$1,600.00
58-1-501(2)(o)	$251.00 - $500.00
THIRD OFFENSE	
Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).	

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor or chief investigator may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

R156-1-506. Supervision of Cosmetic Medical Procedures.

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

(1) the appropriate standards of care for performing nonablative cosmetic medical procedures;

(2) physiology of the skin;

(3) skin typing and analysis;

(4) skin conditions, disorders, and diseases;

(5) pre and post procedure care;

(6) infection control;

(7) laser and light physics training;

(8) laser technologies and applications;

(9) safety and maintenance of lasers;

(10) cosmetic medical procedures an individual is permitted to perform under this title;

(11) recognition and appropriate management of complications from a procedure; and

(12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:

(a) American Heart Association;

(b) American Red Cross or its affiliates; or

(c) American Safety and Health Institute.

KEY: diversion programs, licensing, supervision, evidentiary restrictions
July 11, 2016 58-1-106(1)(a)
Notice of Continuation December 6, 2016 58-1-308
58-1-501(2)

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

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

R156-17b-102. Definitions.

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

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

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

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

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

(3) "Analytical laboratory":

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

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

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

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

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

(7) "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.

(8) "Co-licensed partner" means a person that has the right to engage in the manufacturing or marketing of a co-licensed product.

(9) "Co-licensed product" means a device or prescription drug for which two or more persons have the right to engage in the manufacturing, marketing, or both consistent with FDA's implementation of the Prescription Drug Marketing Act as applicable.

(10) "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.

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

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

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

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

(15) "DMP" means a dispensing medical practitioner licensed under Section 58-17b, Part 8.

(16) "DMP designee" means an individual, acting under the direction of a DMP, who:

(a)(i) holds an active health care professional license under one of the following chapters:

(A) Chapter 67, Utah Medical Practice Act;

(B) Chapter 68, Utah Osteopathic Medical Practice Act;

(C) Chapter 70a, Physician Assistant Act;

(D) Chapter 31b, Nurse Practice Act;

(E) Chapter 16a, Utah Optometry Practice Act;

(F) Chapter 44a, Nurse Midwife Practice Act; or

(G) Chapter 17b, Pharmacy Practice Act; or

(ii) is a medical assistant as defined in Subsection 58-67-102 (9);

(b) meets requirements established in Subsection 58-17b-803 (4)(c); and

(c) can document successful completion of a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622.

(17) "DMPIC" means a dispensing medical practitioner licensed under Section 58-17b, Part 8 who is designated by a dispensing medical practitioner clinic pharmacy to be responsible for activities of the pharmacy.

(18) "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.

(19) "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.

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

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

(a) can withstand repeated use;

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

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

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

(e) may include devices and medical supplies.

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

business or organization.

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

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

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

(26) "FDA-approved" means the federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. Section 301 et seq. and regulations promulgated thereunder permit the subject drug or device to be lawfully manufactured, marketed, distributed, and sold.

(27) "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.

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

(29) "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.

(30) "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".

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

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

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

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

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

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

(37) "Non drug or device handling central prescription processing pharmacy" means a central prescription processing pharmacy that does not engage in compounding, packaging, labeling, dispensing, or administering of drugs or devices.

(38) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (19), 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.

(39) "Other health care facilities" means any entity as defined in Utah Code Subsection 26-21-2(13)(a) or Utah Administrative Code R432-1-3(55).

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

(41) "Patient's agent" means a:

(a) relative, friend or other authorized designee of the patient involved in the patient's care; or

(b) if requested by the patient or the individual under Subsection (40)(a), one of the following facilities:

(i) an office of a licensed prescribing practitioner in Utah;

(ii) a long-term care facility where the patient resides; or

(iii) a hospital, office, clinic or other medical facility that provides health care services.

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

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

(44) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment where the prepackaging occurred.

(45) "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.

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

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

(48) "Refill" means to fill again.

(49) "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 or DMP responsible for dispensing the product to a patient.

(50) "Research facility" means a facility where research takes place that has policies and procedures describing such research.

(51) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy for the

purpose of removing those drugs from stock and destroying them.

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

(53) "Supervisor" means a licensed pharmacist or DMP in good standing with the Division.

(54) "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.

(55) "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.

(56) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and beyond use date for the drug.

(57) "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.

(58) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 39-NF 34), 2016 edition, which is official from May 1, 2016 through Supplement 2, dated December 1, 2016, which is hereby adopted and incorporated by reference.

(59) "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.

(60) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 17b.

R156-17b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-17b-105. Licensure - Administrative Inspection.

In accordance with Subsection 58-17b-103(3)(f), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection shall 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 shall be returned to the PIC or DMPIC 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 shall be witnessed by two Division individuals. A controlled substance destruction form shall be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

(4) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address must be established by the PIC or DMPIC and responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC or DMPIC and responsible party shall cause the Division's Licensing Bureau to be notified on the applicable form prescribed by the Division of the secure email address or any change thereof within seven days of any email address change. Only one email address shall be used for each pharmacy.

R156-17b-302. Pharmacy Licensure Classifications - Pharmacist-in-Charge or Dispensing Medical Practitioner-In-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) A Class A pharmacy includes all retail operations located in Utah and requires a PIC.

(2) A 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 or DMPIC except for pharmaceutical administration facilities and narcotic treatment program pharmacies. Examples of Class B pharmacies include:

(a) closed door pharmacies;

(b) hospital clinic pharmacies;

(c) narcotic treatment program pharmacies;

(d) nuclear pharmacies;

(e) branch pharmacies;

(f) hospice facility pharmacies;

(g) pharmaceutical administration facility pharmacies;

(h) sterile product preparation facility pharmacies; and

(i) dispensing medical practitioner clinic pharmacies.

(3) A Class C pharmacy includes a pharmacy that is involved in:

(a) manufacturing;

(b) producing;

(c) wholesaling;

(d) distributing; or

(e) reverse distributing.

(4) A Class D pharmacy requires a PIC licensed in the state where the pharmacy is located and includes an out-of-state

mail order pharmacy. Facilities with multiple locations shall have licenses for each facility and each component part of a facility.

(5) A Class E pharmacy does not require a PIC and includes:

(a) analytical laboratory pharmacies;

(b) animal control pharmacies;

(c) durable medical equipment provider pharmacies;

(d) human clinical investigational drug research facility pharmacies;

(e) medical gas provider pharmacies;

(f) animal narcotic detection training facility pharmacies

(g) third party logistics providers;

(h) non drug or device handling central prescription processing pharmacies; and

(i) veterinarian pharmaceutical facility pharmacies.

(6) All pharmacy licenses shall 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 or DMPIC shall have one PIC or DMPIC who is employed on a full-time basis as defined by the employer, who acts as a PIC or DMPIC for one pharmacy. However, the PIC or DMPIC may be the PIC or DMPIC of more than one Class A or Class B pharmacy, if the additional Class A or Class B pharmacies are not open to provide pharmacy services simultaneously.

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

R156-17b-303a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(b), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(7), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy that is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician shall complete a training program that is:

(a) accredited by ASHP; or

(b) conducted by:

(i) the National Pharmacy Technician Association;

(ii) Pharmacy Technicians University; or

(iii) a branch of the Armed Forces of the United States, and

(c) meets the following standards:

(i) completion of at least 180 hours of directly supervised practical training in a licensed pharmacy as determined appropriate by a licensed pharmacist in good standing; and

(ii) written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technician trainees that address:

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

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

(4) An individual shall complete a pharmacy technician training program and successfully pass the required examination as listed in Subsection R156-17b-303c(4) within two years after obtaining a pharmacy technician trainee license, unless otherwise approved by the Division in collaboration with the Board for good cause showing exceptional circumstances.

(a) Unless otherwise approved under Subsection (4), an individual who fails to apply for and obtain a pharmacy technician license within the two-year time frame shall repeat a pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.

(5)(a) Pharmacy technician training programs that received Division approval on or before April 30, 2014 are exempt from satisfying standards established in Subsection R156-17b-303a(3) for students enrolled on or before December 31, 2018.

(b) A student in a program described in Subsection (5)(a) shall comply with the program completion deadline and testing requirements in Subsection (4), except that the license application shall be submitted to the Division no later than December 31, 2021.

(c) A program in ASHP candidate status shall notify a student prior to enrollment that if the program is denied accreditation status while the student is enrolled in the program, the student will be required to complete education in another program with no assurance of how many credits will transfer to the new program.

(d) A program in ASHP candidate status that is denied accreditation shall immediately notify the Division, enrolled students and student practice sites, of the denial. The notice shall instruct each student and practice site that:

(i) the program no longer satisfies the pharmacy technician license education requirement in Utah; and

(ii) enrollment in a different program meeting requirements established in Subsection R156-17b-303a(3) is necessary for the student to complete training and to satisfy the pharmacy technician license education requirement in Utah.

(6) An applicant from another jurisdiction seeking licensure as a pharmacy technician in Utah is deemed to have met the qualifications for licensure in Subsection 58-17b-305(1)(f) and 58-17b-305(1)(g) if the applicant:

(a) has engaged in the practice of a pharmacy technician for a minimum of 1,000 hours in that jurisdiction within the past two years or has equivalent experience as approved by the Division in collaboration with the Board; and

(b) has passed and maintained current PTCB or ExCPT certification.

R156-17b-303b. Licensure - Pharmacist - Pharmacy Internship Standards.

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

(a) For graduates of all U.S. pharmacy schools:

(i) At least 1,740 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0 Effective February 14, 2011, which is hereby incorporated by reference.

(ii) Introductory pharmacy practice experiences (IPPE) shall account for not less than 300 hours over the first three professional years.

(iii) A minimum of 150 hours shall be balanced between community pharmacy and institutional health system settings.

(iv) Advanced pharmacy practice experiences (APPE) shall include at least 1,440 hours (i.e., 36 weeks) during the last academic year and after all IPPE requirements are completed.

(v) Required experiences shall:

(A) include primary, acute, chronic, and preventive care among patients of all ages; and

(B) develop pharmacist-delivered patient care competencies in the community pharmacy, hospital or health-system pharmacy, ambulatory care, inpatient/acute care, and general medicine settings.

(vi) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(vii) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

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

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

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

(xi) If a pharmacy intern ceases to meet all requirements for intern licensure, the pharmacy intern shall surrender the pharmacy intern license to the Division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

(b) For graduates of all foreign pharmacy schools, at least 1,440 hours of supervised pharmacy practice in the United States.

R156-17b-303c. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that shall be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination (MPJE) with a minimum passing score as established by NABP.

(2) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

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

(4) In accordance with Subsection 58-17b-305(1)(g), an applicant applying for licensure as a pharmacy technician shall pass the PTCB or ExCPT with a passing score as established by the certifying body. The certificate shall exhibit a valid date and that the certification is active.

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

R156-17b-303d. Qualifications for Licensure - Meet with the Board.

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-304. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist in Utah 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, enrolled in a pharmacy graduate residency or fellowship program, or licensed, in good standing, to practice pharmacy in another state or territory of the United States;

(b) submit a complete application for licensure as a pharmacist except the passing of the NAPLEX and MJPE examinations;

(c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a pharmacist with an active, non-temporary license that may or may not include a controlled substance license; and

(d) has registered to take the required licensure examinations.

(2) A temporary pharmacist license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the Division receives notice from the examination agency that the individual has failed either examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(4) A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

R156-17b-305. Licensure - Pharmacist by Endorsement.

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2,000 hours in the four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

R156-17b-307. Qualifications for Licensure - Criminal Background Checks.

(1) An applicant for licensure as a pharmacy shall document to the satisfaction of the Division the owners and management of the pharmacy and the facility in which the pharmacy is located.

(2) The following individuals associated with an applicant for licensure as a pharmacy shall be subject to the criminal background check requirements set forth in Section 58-17b-307:

(a) the PIC;

(b) the PIC's immediate supervisor;

(c) the senior person in charge of the facility in which the pharmacy is located;

(d) others associated with management of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare; and

(e) owners of the pharmacy or the facility in which the

pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare.

R156-17b-308. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 17b is established by rule in Section R156-1-308a.

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

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) the intern applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) the intern lacks the required number of internship hours for licensure.

R156-17b-309. Continuing Education.

(1) In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a requirement for continuing education as a condition for renewal or reinstatement of a pharmacist or pharmacy technician license issued under Title 58, Chapter 17b.

(2) Requirements shall consist of the following number of qualified continuing education hours in each preceding renewal period:

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified continuing professional education hours shall consist of the following:

(a) for pharmacists:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy;

(iii) programs of certification by qualified individuals, such as certified diabetes educator credentials, board certification in advanced therapeutic disease management or other certification as approved by the Division in consultation with the Board; and

(iv) training or educational presentations offered by the Division.

(b) for pharmacy technicians:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

(iii) educational meetings that meet ACPE continuing education criteria sponsored by the Utah Pharmacist Association, the Utah Society of Health-System Pharmacists or other professional organization or association; and

(iv) training or educational presentations offered by the Division.

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

(a) Pharmacists:

(i) a minimum of 12 hours shall be obtained through attendance at live or technology enabled participation lectures, seminars or workshops;

(ii) a minimum of 15 hours shall be in drug therapy or patient management; and

(iii) a minimum of one hour shall be in pharmacy law or ethics.

(b) Pharmacy Technicians:

(i) a minimum of eight hours shall be obtained through attendance at live or technology enabled participation at lectures, seminars or workshops; and

(ii) a minimum of one hour shall be in pharmacy law or ethics.

(iii) documentation of current PTCB or ExCPT certification will count as meeting the requirement for continuing education.

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

R156-17b-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, pharmacy technician, pharmacy technician trainee, or DMP whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time to demonstrate the ability to resume competent practice.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(1) preventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):

initial offense: $500 - $2,000

subsequent offense(s): $5,000

(2) failing to deliver the license or permit or certificate to the Division upon demand, in violation Subsection 58-17b-501(2):

initial offense: $100 - $1,000

subsequent offense(s): $500 - $2,000

(3) using the title pharmacist, druggist, pharmacy intern, pharmacy technician, pharmacy technician trainee or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of Subsection 58-17b-501(3)(a):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(4) conducting or transacting business under a name that contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in

any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of Subsection 58-17b-501(3)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(5) buying, selling, causing to be sold, or offering for sale any drug or device that bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(6) using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process that is a trade secret, in violation of Subsection 58-17b-501(5):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(7) illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(8) filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(9) requiring any employed pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):
initial offense: $500 - $1,000
subsequent offense(s): $1,500 - $5,000
(11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(12) selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):
initial offense: $100 - $500
subsequent offense(s): $1,000 - $2,5000
(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):
initial offense:$2,500 - $5,000
subsequent offense(s):$5,500 - $10,000
(16) misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee in violation of Subsection 58-17b-502(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(21) requiring or permitting pharmacy interns, pharmacy technicians, or pharmacy technician trainees to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):
initial offense: $100 - $500
subsequent offense(s): $2,000 - $10,000
(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(26) preparing a prescription drug in a dosage form that is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(13):
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, in violation of Subsection R156-17b-502(1):
initial offense: $250 - $500
subsequent offense(s): $2,000 - $10,000
(28) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):
initial offense: $250 - $500
subsequent offense(s): $500 - $750
(29) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(30) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(31) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):
initial offense: $50 - $100
subsequent offense(s): $200 - $300
(32) defaulting on a student loan, in violation of Subsection R156-17b-502(5):
initial offense: $100 - $200
subsequent offense(s): $200 - $500
(33) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):
initial offense: $500 - $1,000
subsequent offense(s): $2,000 - $10,000
(34) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(35) failing to return a self-inspection report according to the deadline established by the Division, or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):
initial offense: $100 - $250
subsequent offense(s): $300 - $500
(36) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):
initial violation: $50 - $100
failure to comply within determined time: $250 - $500
subsequent violations: $250 - $500
failure to comply within established time: $750 - $1,000
(37) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(38) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(39) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):
Pharmacist initial offense: $100 - $250
Pharmacist subsequent offense(s): $500 - $2,500
Pharmacy initial offense: $250 - $1,000
Pharmacy subsequent offense(s): $500 - $5,000
(40) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):
Pharmacist initial offense: $50 - $100
Pharmacist subsequent offense(s): $250 - $500
Pharmacy initial offense: $250 - $500
Pharmacy subsequent offense(s): $1,000 - $2,000
(41) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):
Pharmacy personnel initial offense: $500 - $2,500
Pharmacy personnel subsequent offense(s): $5,000 - $10,000
Pharmacy: $2,000 per occurrence
(42) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):
Double the original penalty amount up to $10,000
(43) failing to comply with the PIC or DMPIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):
initial offense: $500 - $2,000
subsequent offense(s) $2,000 - $10,000
(44) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):
initial offense: $500 - $2,500
subsequent offense: $5,000 - $10,000
(45) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):
initial offense: $100 - $500
subsequent offense: $200 - $1,000
(46) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):
initial offense: $100 - $500
subsequent offense: $200 - $1,000
(47) failing to provide PIC or DMPIC information to the Division within 30 days of a change in PIC or DMPIC, in violation of Subsection R156-17b-502(20):
initial offense: $100 - $500
subsequent offense: $200 - $1,000
(48) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):
initial offense: $500 - $2,000
subsequent offense: $2,000 - $10,000
(49) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):
Pharmacist initial offense: $100 - $300
Pharmacist subsequent offense(s): $500 - $1,000
Pharmacy initial offense: $250 - $500
Pharmacy subsequent offense(s): $500 - $1,250
(50) practicing or attempting to practice as a pharmacist, pharmacist intern, pharmacy technician, or pharmacy technician trainee or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(51) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(52) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(53) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(54) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board

through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):
initial offense: $100 - $2,000
subsequent offense(s): $2,000 - $10,000
(55) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A)and 58-1-501(2)(m)(i):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B)and 58-1-501(2)(m)(ii):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(57) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):
initial offense: $100 - $2,000
subsequent offense(s): $2,000 - $10,000
(58) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(59) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(60) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(61) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee, in violation of Subsection 58-1-501(2)(e):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(62) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(63) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(64) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee by any form of action or communication that is false, misleading, deceptive or fraudulent, in violation of Subsection 58-1-501(2)(h):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(65) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(66) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(67) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):
initial offense: $100 - $1,000
subsequent offense(s): $500 - $2,000
(68) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(69) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(70) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(71) practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501 (2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(72) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(73) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(74) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(75) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby

adopted and incorporated by reference, in violation of R156-1-501(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(76) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:
initial offense: $1,000 - $5,000
subsequent offense(s) $5,000 - $10,000
(77) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance that is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(78) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(79) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(80) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action that revokes, suspends, or limits the license, in violation of R156-37-502(3):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(81) failing to maintain controls over controlled substances that would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(82) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(83) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(84) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(85) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(86) any other conduct that constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(87) if licensed as a DMP or DMP clinic pharmacy, delegating the dispensing of a drug to a DMP designee who has not completed a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622, in violation of Subsection R156-17b-502 (25):
initial offense: $500 - $2,000
subsequent offense: $2,500 - $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 if such chapters are applicable to activities performed in the pharmacy;
(3) failing to comply with the continuing education requirements set forth in these rules;
(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;
(5) defaulting on a student loan;
(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;
(7) failing to comply with administrative inspections;
(8) failing to return according to the deadline established by the Division, or providing false information on a self-inspection report;
(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;
(10) abandoning a pharmacy or leaving prescription drugs accessible to the public;
(11) failing to identify licensure classification when communicating by any means;
(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);
(13) allowing any unauthorized persons in the pharmacy;
(14) failing to offer to counsel any person receiving a prescription medication;
(15) failing to pay an administrative fine that has been assessed in the time designated by the Division;
(16) failing to comply with the PIC or DMPIC standards as established in Section R156-17b-603;
(17) failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;
(18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);
(19) dispensing medication that has been discontinued by the FDA;
(20) failing to keep or report accurate records of training hours;
(21) failing to provide PIC or DMPIC information to the Division within 30 days of a change in PIC or DMPIC;
(22) requiring a pharmacy, pharmacist, or DMP to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist or DMP to other pharmacy personnel in circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;
(23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts;
(24) failing to ensure, as a DMP or DMP clinic pharmacy, that a DMP designee has completed a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622; and
(25) failing to make a timely report regarding dispensing of an opiate antagonist to the division and to the physician who

issued the standing order as required in Section R156-17b-625.

R156-17b-601. Operating Standards - Pharmacy Technician and Pharmacy Technician Trainee.

In accordance with Subsection 58-17b-102(56), practice as a licensed pharmacy technician is defined as follows:

(1) A pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a database or patient profile;

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

(j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection 58-17b-102(56);

(k) accepting new prescription drug orders left on voicemail for a pharmacist to review;

(l) performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:

(i) technicians authorized by a hospital to check medications shall have at least one year of experience working as a pharmacy technician and at least six months experience at the hospital where the technician is authorized to check medications;

(ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy (e.g. barcode scanning, drug identification automation, checklists, visual aids);

(iii) hospitals that authorize technicians to check medications shall have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment, and shall maintain a list of technicians on staff that are allowed to check medications;

(iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;

(v) a supervising pharmacist shall be immediately available during all times that a pharmacy technician is checking medications;

(vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:

(A) process for technician training and ongoing competency assessment and documentation;

(B) process for supervising technicians who check medications;

(C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology to be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes that identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

(m) additional tasks not requiring the judgment of a pharmacist.

(2) A pharmacy technician trainee may perform any task in Subsection (1) with the exception of performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy as described in Subsection (1)(l).

(3) The pharmacy technician shall not receive new prescriptions or medication orders as described in Subsection 58-17b-102(56)(b)(iv), clarify prescriptions or medication orders nor perform drug utilization reviews. A new prescription, as used in Subsection 58-17b-102(56)(b)(iv), does not include authorization of a refill of a legend drug.

(4) Pharmacy technicians shall have general supervision by a pharmacist in accordance with Subsection R156-17b-603(3)(s).

(5) A pharmacy technician trainee shall practice only under the direct supervision of a pharmacist and in a ratio not to exceed one pharmacy technician trainee to one pharmacist.

R156-17b-602. Operating Standards - Pharmacy Intern.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(50), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

R156-17b-603. Operating Standards - Pharmacist-In-Charge or Dispensing-Medical-Practitioner-In-Charge.

(1) The PIC or DMPIC shall have the responsibility to oversee the operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC or DMPIC shall be personally in full and actual charge of the pharmacy.

(2) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a unique email address shall be established by the PIC, DMPIC, or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC, DMPIC, or responsible party shall notify the Division of the pharmacy's email address in the initial application for licensure.

(3) The duties of the PIC or DMPIC shall include:

(a) assuring that a pharmacist, pharmacy intern, DMP, or DMP designee dispenses drugs or devices, including:

(i) packaging, preparation, compounding and labeling; and

(ii) ensuring that drugs are dispensed safely and accurately as prescribed;

(b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(c) assuring that a pharmacist, pharmacy intern, or DMP communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist, pharmacy intern, or DMP;

(d) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(e) education and training of pharmacy personnel;

(f) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(g) disposal and distribution of drugs from the pharmacy;

(h) bulk compounding of drugs;

(i) storage of all materials, including drugs, chemicals and biologicals;

(j) 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;

(k) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(l) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(m) 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;

(n) 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;

(o) if permitted to use an automated pharmacy system for dispensing purposes:

(i) ensuring that the 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; and

(ii) 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;

(p) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(q) assuring that all pharmacy personnel have the appropriate licensure;

(r) assuring that no pharmacy operates with a ratio of pharmacist or DMP to other pharmacy personnel circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(s) assuring that the PIC or DMPIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC or DMPIC within 30 days of the change; and

(t) assuring, with regard to the unique email address used for self-audits and pharmacy alerts, that:

(i) the pharmacy uses a single email address; and

(ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the PIC or DMPIC 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 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 or DMPIC 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 or DMPIC shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) a surrender of the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(4) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter shall be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the PIC or DMPIC cannot provide notification 14 days prior to the closing, the PIC or DMPIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the PIC or DMPIC 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.

(9) Notwithstanding the requirements of this section, a DMP clinic pharmacy that closes but employs licensed practitioners who desire to continue providing services other than dispensing may continue to use prescription drugs in their practice as authorized under their respective licensing act.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

(a) the PIC or DMPIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a written, typewritten, or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device shall be promptly transcribed;

(e) the inventory may be taken either as the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the PIC or DMPIC 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 or DMPIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure of all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventories, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory. An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(4) Requirement for annual controlled substances inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(6) Requirement for taking inventory when closing a pharmacy includes the PIC, DMPIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(7) All pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances that shall be reconciled according to facility policy.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

(1) meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than one year in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to:

(i) no more than two pharmacy interns during a working shift except as provided in Subsection (ii);

(ii) up to five pharmacy interns at public-health outreach programs such as informational health fairs, chronic disease state screening and education programs, and immunization clinics, provided:

(A) the totality of the circumstances are safe and appropriate according to generally recognized industry standards of practice; and

(B) the preceptor has obtained written approval from the pharmacy interns' schools of pharmacy for the intern's participation; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17b-102(69)(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, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee;

(f) housekeeping; and

(g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into a patient prescription profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(69)(b) all supportive personnel shall be under the supervision of a licensed pharmacist or DMP. The licensed pharmacist or DMP 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, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Common Carrier Delivery.

A pharmacy that employs the United States Postal Service or other common carrier to deliver a filled prescription directly to a patient shall, under the direction of the PIC, DMPIC, or other responsible employee:

(1) use adequate storage or shipping containers and shipping processes to ensure drug stability and potency. The shipping processes shall include the use of appropriate packaging material and devices, according to the recommendations of the manufacturer or the United States Pharmacopeia Chapter 1079, in order to ensure that the drug is kept at appropriate storage temperatures throughout the delivery process to maintain the integrity of the medication;

(2) use shipping containers that are sealed in a manner to detect evidence of opening or tampering;

(3) develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements. The policies and procedures shall address when drugs do not arrive at their destination in a timely manner or when there is evidence that the integrity of a drug was compromised during shipment. In these instances, the pharmacy shall make provisions for the replacement of the drugs;

(4)(i) provide for an electronic, telephonic, or written communication mechanism for a pharmacy to offer counseling to the patient as defined in Section 58-17b-613; and

(ii) provide documentation of such counseling; and

(5) provide information to the patient indicating what the patient should do if the integrity of the packaging or drug was compromised during shipment.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a 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 or DMP 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, pharmacy technician, pharmacy technician trainee, or DMP designee.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Counseling shall be offered orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits oral communication.

(2) A pharmacy facility shall orally offer to counsel but shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such counseling.

(3) Based upon the professional judgment of the pharmacist, pharmacy intern, or DMP, patient counseling may include the following elements:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug, when known, and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Only a pharmacist, pharmacy intern, or DMP may orally provide counseling to a patient or patient's agent and answer questions concerning prescription drugs.

(6) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (3) 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 (6)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

(7) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the patient's drugs.

R156-17b-610.5. Dispensing in Emergency Department - Patient's Immediate Need.

In accordance with Section 58-17b-610.5, the guidelines for medical practitioners to dispense drugs to a patient in a hospital emergency department are established in this section.

(1) To meet a patient's immediate needs, the prescribing practitioner may provide up to a three-day emergency supply, which is properly labeled according to Subsection R156-17b-610.5(3).

(2) Notwithstanding Subsection R156-17b-610.5(1), the following may be provided:

(a) a seven day supply of sexually-transmitted infections (STI) prophylaxis;

(b) a Naloxone kit.

(3) Labeling of an emergency supply shall at a minimum include:

(a) prescribing practitioner's name, facility name and telephone number;

(b) patient's name;

(c) name of medication and strength;

(d) date given;

(e) instructions for use; and

(f) beyond use date.

(4) Records of controlled substances dispensed by the prescribing practitioner shall be provided to the appropriate pharmacy so that the applicable prescription data can be reported to the Utah Controlled Substance Database.

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, pharmacy intern, or DMP.

(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, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee.

(4) In accordance with Sections 58-17b-609 and 58-17b-611, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist, pharmacy intern, or DMP at the pharmacy holding the prescription to a pharmacist, pharmacy intern or DMP 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, pharmacy intern, or DMP and receiving pharmacist, pharmacy intern, or DMP 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, pharmacy interns, or DMP 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, pharmacy intern, or DMP 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, pharmacy intern, or DMP 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, pharmacy intern, or DMP to whom such prescription is transferred; and

(E) the name of the pharmacist, pharmacy intern, or DMP 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 that have been previously transferred; and

(f) a pharmacist, pharmacy intern, or DMP may not refuse to transfer original prescription information to another pharmacist, pharmacy intern, or DMP who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist or DMP may exercise 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 that prohibits the pharmacist or DMP from being able to contact the practitioner; or

(ii) the pharmacist or DMP 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 or DMP 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 or DMP informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist or DMP 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 or DMP 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 or DMP 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 that contains the essential information;

(b) after a reasonable effort, the pharmacist or DMP 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 or DMP, in his or her 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 or DMP complies with the requirements of Subsections (11)(c) through (g) of this section.

(13) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(29) through (30), 58-17b-602(1), R156-82, and R156-1, prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist, pharmacy intern, or DMP 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 or DMP 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 or DMP is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner that 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 or DMP 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, pharmacy technicians, or pharmacy technician trainees, DMPs, and DMP designees electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), the following operating standards apply to all Class A and Class B pharmacies, which may be supplemented by additional standards defined in this rule applicable to specific types of Class A and B pharmacies. The general operating standards include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) if transferring a drug from a manufacturer's or distributor's original container to another container, the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) if dispensing controlled substances, be equipped with a security system to:

(i) permit detection of entry at all times when the facility is closed; and

(ii) provide notice of unauthorized entry to an individual; and

(g) be equipped with a lock on any entrances to the facility where drugs are stored.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. If a refrigerator or freezer is necessary to properly store drugs at the pharmacy, the pharmacy shall keep a daily written or electronic log of the temperature of the refrigerator or freezer on days of operation. The pharmacy shall retain each log entry for at least three years.

(3) Facilities engaged in simple, moderate or complex non-sterile or any level of sterile compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) Facilities shall follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations.

(b) Facilities may compound in anticipation of receiving prescriptions in limited amounts.

(c) Bulk active ingredients shall:

(i) be procured from a facility registered with the federal Food and Drug Administration; and

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness.

(d) All facilities that dispense prescriptions must comply with the record keeping requirements of their State Boards of Pharmacy. When a facility compounds a preparation according to the manufacturer's labeling instructions, then further documentation is not required. All other compounded preparations require further documentation as described in this section.

(e) A master formulation record shall be approved by a pharmacist or DMP for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master formulation record shall be used as the compounding record from which each batch is prepared and on which all documentation for that batch occurs. The master formulation record may be stored electronically and shall contain at a minimum:

(i) official or assigned name;

(ii) strength;

(iii) dosage form of the preparation;

(iv) calculations needed to determine and verify quantities of components and doses of active pharmaceutical ingredients;

(v) description of all ingredients and their quantities;

(vi) compatibility and stability information, including references when available;

(vii) equipment needed to prepare the preparation;

(viii) mixing instructions, which shall include:

(A) order of mixing;

(B) mixing temperatures or other environmental controls;

(C) duration of mixing; and

(D) other factors pertinent to the replication of the preparation as compounded;

(ix) sample labeling information, which shall contain, in addition to legally required information:

(A) generic name and quantity or concentration of each active ingredient;

(B) assigned beyond use date;

(C) storage conditions; and

(D) prescription or control number, whichever is applicable;

(x) container used in dispensing;

(xi) packaging and storage requirements;

(xii) description of final preparation; and

(xiii) quality control procedures and expected results.

(f) A compounding record for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) official or assigned name;

(ii) strength and dosage of the preparation;

(iii) Master Formulation Record reference for the preparation;

(iv) names and quantities of all components;

(v) sources, lot numbers, and expiration dates of components;

(vi) total quantity compounded;

(vii) name of the person who prepared the preparation;

(viii) name of the compounder who approved the preparation;

(ix) name of the person who performed the quality control procedures;

(x) date of preparation;

(xi) assigned control, if for anticipation of use or prescription number, if patient specific, whichever is applicable;

(xii) duplicate label as described in the Master Formulation Record means the sample labeling information that is dispensed on the final product given to the patient and shall at minimum contain:

(A) active ingredients;
(B) beyond-use-date;
(C) storage conditions; and
(D) lot number;
(xiv) proof of the duplicate labeling information, which proof shall:
(A) be kept at the pharmacy;
(B) be immediately retrievable;
(C) include an audit trail for any altered form; and
(D) be reproduced in:
(I) the original format that was dispensed;
(II) an electronic format; or
(III) a scanned electronic version;
(xvii) description of final preparation;
(xviii) results of quality control procedures (e.g. weight range of filled capsules, pH of aqueous liquids); and
(xix) documentation of any quality control issues and any adverse reactions or preparation problems reported by the patient or caregiver.
(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 active solution and ingredient names, amounts, strengths and concentrations, when applicable;
(iii) quantity;
(iv) beyond use date and time, when applicable;
(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and
(vi) device-specific instructions, where appropriate.
(h) All prescription labels for compounded sterile and non-sterile medications when dispensed to the ultimate user or agent shall bear at a minimum in addition to what is required in Section 58-17b-602 the following:
(i) generic name and quantity or concentration of each active ingredient. In the instance of a sterile preparation for parenteral use, labeling shall include the name and base solution for infusion preparation;
(ii) assigned compounding record or lot number; and
(iii) "this is a compounded preparation" or similar language.
(i) The beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;
(i) sources of drug stability information shall include the following:
(A) references can be found in Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;
(B) manufacturer recommendations; and
(C) reliable, published research;
(ii) when interpreting published drug stability information, the pharmacist or DMP shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and
(iii) methods for establishing beyond use dates shall be documented; and
(j) There shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.
(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:
(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;
(b) R156-1, General Rule of the Division of Occupational and Professional Licensing;
(c) Title 58, Chapter 17b, Pharmacy Practice Act;
(d) R156-17b, Utah Pharmacy Practice Act Rule;
(e) Title 58, Chapter 37, Utah Controlled Substances Act;
(f) R156-37, Utah Controlled Substances Act Rule;
(g) Title 58, Chapter 37f, Controlled Substance Database Act;
(h) R156-37f, Controlled Substance Database Act Rule;
(i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;
(j) current FDA Approved Drug Products (orange book); and
(k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.
(5) The facility shall maintain a current list of licensed employees involved in the practice of pharmacy at the facility. The list shall include individual licensee names, license classifications, license numbers, and license expiration dates. The list shall be readily retrievable for inspection by the Division and may be maintained in paper or electronic form.
(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.
(7) A pharmacy shall not dispense a prescription drug or device to a patient unless a pharmacist or DMP is physically present and immediately available in the facility.
(8) Only a licensed Utah pharmacist, DMP or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.
(9) The facility or parent company shall maintain a record for not less than 5 years of the initials or identification codes that identify each dispensing pharmacist or DMP by name. The initials or identification code shall be unique to ensure that each pharmacist or DMP can be identified; therefore identical initials or identification codes shall not be used.
(10) The pharmacy facility shall maintain copy 3 of DEA order form (Form 222) that 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, DMP, or DMP designee to sign DEA order forms (Form 222) shall be available to the Division whenever necessary.
(12) A pharmacist, DMP or other responsible individual shall verify that controlled substances are listed on the suppliers' invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.
(13) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.
(14) A copy of inventories required under Section R156-17b-605 shall be made available to the Division when requested.
(15) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.
(16) If the pharmacy does not store drugs in a locked cabinet and has a drop/false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or other measures shall be taken to prevent unauthorized entry into the pharmacy.

R156-17b-614b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(8) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:
(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:
(a) the distance between or from nearby alternative

pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of

quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

(8) A nuclear pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compound for sterile preparations.

(9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

R156-17b-614f. Operating Standards - Central Prescription Processing.

In accordance with Subsection 58-17b-601(1), the following operating standards apply to pharmacies that engage in central prescription processing as defined in Subsection 58-17b-102(9):

(1) Centralized prescription processing services may be performed if the parties:

(a) have common ownership or common administrative control; or

(b) have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract; and

(c) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.

(2) The parties performing or contracting for centralized prescription processing services shall maintain a policy and procedures manual, and documentation of implementation, which shall be made available to the Division upon inspection and which includes the following:

(a) a description of how the parties will comply with federal and state laws and regulations;

(b) appropriate records to identify the responsible pharmacists and the dispensing and counseling process;

(c) a mechanism for tracking the prescription drug order during each step in the dispensing process;

(d) a description of adequate security to protect the integrity and prevent the illegal use or disclosure of protected health information; and

(e) a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

(3) "Non drug or device handling central prescription processing pharmacies", as defined in Subsection R156-17b-102(37), shall be licensed as Class E pharmacies. All other central prescription processing pharmacies shall be licensed in the appropriate pharmacy license classification.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer.

In accordance with Subsections 58-17b-102(47) 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) Each pharmaceutical wholesaler or manufacturer that distributes or manufactures drugs or medical devices in Utah 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:

(a) prescription drugs or prescription drugs that are co-licensed products satisfy the requirement in Subsection (1) by registering their establishment with the FDA pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205 including any amendments thereto, to the Division; or

(b) devices or devices that are co-licensed products, including products packaged with devices, such as convenience kits, that are exempt from the definition of transaction in 21 USC sec. 360eee (24)(B)(xii-xvi) satisfy the requirement in Subsection (1) by registering their establishment with the FDA pursuant to 21 CFR.

(3) An applicant for licensure as a pharmaceutical wholesale distributor shall provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publicly traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state where 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) All pharmaceutical wholesalers and manufacturer shall publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(7) 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.

(8) 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.

(9) 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 that are outside of established limits.

(10) 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.

(11) 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.

(12) 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.

(13) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsections R156-17b-102(19)(c) and R156-17b-615(13), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(14) 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.

(15) Each facility shall establish, maintain and adhere to written policies and procedures that 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.

(16) 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.

(17) 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.

(18) 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.

(19) A Class C pharmacy shall not be located in the same building as a separately licensed Class A, B, D, or E pharmacy unless the two pharmacies are located in different suites as recognized by the United States Postal Service. Two Class C pharmacies may be located at the same address in the same suite if the pharmacies:

(a) are under the same ownership;

(b) have processes and systems for separating and securing all aspects of the operation; and

(c) have traceability with a clear audit trail that distinguishes a pharmacy's purchases and distributions.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-612(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection or NABP inspection completed as part of the NABP Verified Pharmacy Program (VPP) showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds shall follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol that includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs to be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) Class E pharmacies shall comply with all applicable federal and state laws.

R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

(5) possess prescription drugs for the purpose of analysis; and

(6) take measures to prevent the theft or loss of controlled substances.

R156-17b-617c. Class E Pharmacy Operating Standards - Animal Control or Animal Narcotic Detection Training.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal control or animal narcotic detection training facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia, immobilization, or narcotic detection training of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia, immobilization, or narcotic detection training purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security that limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal control or animal narcotic detection training facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval that include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia, immobilization, or narcotic detection training of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business

guests, visitors, maintenance personnel, and non-employee service personnel.

R156-17b-617d. Class E Pharmacy Operating Standards-Durable Medical Equipment.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) be equipped to permit the orderly storage of durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) maintain prescription forms and records for a period of five years;

(f) be locked and enclosed in such as way as to bar entry by the public or any non-personnel when the facility is closed; and

(g) post the license of the facility in full view of the public.

(2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, April 1, 2012 edition, which are hereby incorporated by reference.

(2) In accordance with Subsections 58-37-6(2)(b) and (3)(a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations that are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership when one of the following occurs:

(i) a change in entity type; or

(ii) the sale or transfer of 51% or more of an entity's ownership or membership interest to another individual or entity.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

(3) Upon approval of the name change, the original licenses shall be surrendered to the Division.

R156-17b-619. Operating Standards - Third Party Payors.

Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when

the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

R156-17b-622. Standards - Dispensing Training Program.

(1) In accordance with Subsection R156-17b-102(17), a formal or on-the-job dispensing training program completed by a DMP designee is one that covers the following topics to the extent that the topics are relevant and current to the DMP practice where the DMP designee is employed:

(a) role of the DMP designee;

(b) laws affecting prescription drug dispensing;

(c) pharmacology including the identification of drugs by trade and generic names, and therapeutic classifications;

(d) pharmaceutical terminology, abbreviations and symbols;

(e) pharmaceutical calculations;

(f) drug packaging and labeling;

(g) computer applications in the pharmacy;

(h) sterile and non-sterile compounding;

(i) medication errors and safety;

(j) prescription and order entry and fill process;

(k) pharmacy inventory management; and

(l) pharmacy billing and reimbursement.

(2) Documentation demonstrating successful completion of a formal or on-the-job dispensing training program shall include the following information:

(a) name of individual trained;

(b) name of individual or entity that provided training;

(c) list of topics covered during the training program; and

(d) training completion date.

R156-17b-623. Standards - Approved Cosmetic Drugs and Injectable Weight Loss Drugs for Dispensing Medical Practitioners.

(1) A cosmetic drug that may be dispensed by a DMP in accordance with Section 58-17b-803 is limited to Latisse.

(2) An injectable weight loss drug that may be dispensed by a DMP in accordance with Section 58-17b-803 is limited to human chorionic gonadotropin.

R156-17b-624. Operating Standards. Repackaged or Compounded Prescription Drugs - Sale to a Practitioner for Office Use.

Pursuant to Section 58-17b-624, a pharmacy may repackage or compound a prescription drug for sale to a practitioner for office use provided that it is in compliance with all applicable federal and state laws and regulations regarding the practice of pharmacy, including, but not limited to the Food, Drug, and Cosmetic Act, 21 U.S.C.A 301 et seq.

R156-17b-625. Standards - Reporting and Maintaining Records on the Dispensing of an Opiate Antagonist.

(1) In accordance with Subsections 26-55-105(2)(c) and (d), the pharmacist-in-charge or a responsible corporate officer of each pharmacy licensee that dispenses an opiate antagonist pursuant to a valid standing prescription drug order issued by a physician, shall affirm that the pharmacy licensee has complied with the protocol for dispensing an opiate antagonist as set forth in Section 26-55-105, and shall report, on an annual basis, to the division and to the physician who issued the opiate antagonist standing drug order, the following information:

(a) the total number of single doses of opiate antagonists dispensed during the reporting period; and

(b) the name of each opiate antagonist dispensed, along with the total number of single doses of that particular named opiate antagonist.

(2) Corporations or organizations with multiple component pharmacy licenses may submit one cumulative report for all its component pharmacy licensees. However, that report must contain the information described above for each of the component pharmacy licensees.

(3) Null reporting is not required. If a pharmacy licensee does not dispense an opiate antagonist during any year, that pharmacy licensee is not required to make an affirmation or report to the division.

(4) The annual affirmation and report described above is due to the division and to the physician who issued the standing drug order no later than 15 days following December 31 of each calendar year.

(5) In accordance with Subsection 26-55-105(2)(d), a pharmacy licensee who dispenses an opiate antagonist pursuant to a valid standing prescription order issued by a physician, shall maintain, subject to audit, the following information:

(a) the name of the individual to whom the opiate antagonist is dispensed;

(b) the name of the opiate antagonist dispensed;

(c) the quantity of the opiate antagonist dispensed;

(d) the strength of the opiate antagonist dispensed;

(e) the dosage quantity of the opiate antagonist dispensed;

(f) the full name of the drug outlet which dispensed the opiate antagonist;

(g) the date the opiate antagonist was dispensed; and

(h) the name of physician issuing the standing order to dispense the opiate antagonist.

(6) The division approves the protocol for the issuance of a standing prescription drug order for opiate antagonists, which is set forth in Subsection 26-55-105(2)(a) through (d) along with the requirements set forth in the foregoing provisions, and the reporting requirements set forth in Sections R156-67-604 and R156-68-604.

R156-17b-904. Criteria for Eligible Prescription Drug - Beyond-use Date or Expiration Date.

The division in collaboration with the board has not established a date later than the beyond use date or the expiration date recommended by the manufacturer for a specific prescription drug.

R156-17b-905. Fees.

As authorized by Subsection 58-17b-905(2)(e), an eligible pharmacy may charge the following handling fees:

(1) Before accepting a prescription drug under the program: $0 - $10; and

(2) Before dispensing a prescription drug under the program: $0 - $5.

R156-17b-907a. Registration Requirements - Eligible Pharmacy.

(1) A pharmacy seeking registration with the division as an eligible pharmacy shall submit an application on a form provided by the division.

(2) The division's form shall at a minimum require the applicant pharmacy to establish that:

(a) the applicant is currently licensed and in good standing with the division;

(b) the applicant agrees to maintain, subject to inspection by the division, written standards and procedures in compliance with Section R156-17b-907c;

(c) the applicant agrees to create and maintain, subject to inspection by the division, a special training program in accordance with Section R156-17b-907e; and

(d) as required by Subsection 58-17b-902(8), the applicant is operated by a county, county health department, a pharmacy under contract with a county health department, the Department of Health, the Division of Substance Abuse and Mental Health, or a charitable clinic.

R156-17b-907b. Formulary.

The formulary established under Subsection 58-17b-907(2) shall include all prescription drugs approved by the federal Food and Drug Administration that meet Section 58-17b-904 criteria, except for:

(1) controlled substances;

(2) compounded drugs; and

(3) drugs that can only be dispensed to a patient registered with the drug's manufacturer per federal Food and Drug Administration requirements.

R156-17b-907c. Standards and Procedures - Eligible Pharmacies.

An eligible pharmacy shall maintain written standards and procedures available for inspection by the division that:

(1) satisfy the requirements of Section 58-17b-907; and

(2) satisfy labeling requirements of Subsections 58-17b-602(5) through (8), and ensure that labels clearly identify the eligible drug was dispensed under the program.

R156-17b-907d. Standards and Procedures - Facilities and Mental Health and Substance Abuse Clients.

(1) In accordance with Subsection 58-17b-907(4)(a), the division shall schedule and facilitate an annual meeting between the Department of Health and eligible pharmacies to establish program standards and procedures for assisted living facilities and nursing care facilities; and

(2) In accordance with Subsection 58-17b-907(4)(b), the division shall schedule and facilitate an annual meeting between the Division of Substance Abuse and Mental Health and eligible pharmacies to establish program standards and procedures for mental health and substance abuse clients.

R156-17b-907e. Special Training Program.

An eligible pharmacy shall:

(1) create and maintain a special training program that its pharmacists and licensed pharmacy technicians shall complete before participating in the program; and

(2) maintain a record for at least two years of all pharmacists and licensed pharmacy technicians that have completed the special training program.

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 the FCCPT.

(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) "FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

(5) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(6) "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.

(7) "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.

(8) "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.

(9) "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 shall document that the applicant's education is equal to a CAPTE accredited degree and that the applicant is able to read, write, speak, understand, and be understood in the English language by submitting to the Division a Type I review from the FCCPT. 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.

(4) An applicant who has met all requirements for licensure as a physical therapist except passing the FSBPT National Physical Therapy Examination-Physical Therapist may apply for licensure as a physical therapist assistant.

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, after submitting proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency. A passing score on the FSBPT's National Physical Therapy Examination shall be verified through a score transfer from the FSBPT.

(2) An applicant for licensure as a physical therapist who fails the FSBPT National Physical Therapy Examination-Physical Therapist is eligible to sit for the FSBPT National Physical Therapy Examination-Physical Therapist Assistant after submitting an application for licensure as a Physical Therapist Assistant.

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 two 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 two 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 courses meeting these requirements;

(E) a maximum of ten percent of the number of contact hours required for renewal for supervision of a physical therapist or physical therapist assistant student in an accredited college program and the licensee shall receive one contact hour of credit for every 80 hours of clinical instruction;

(F) a maximum of 15 contact hours required for renewal for serving as a clinical mentor for a physical therapy residency or fellowship training program at a credentialed program and the licensee shall receive one contact hour of credit for every ten hours of residency or fellowship;

(G) 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;

(H) a maximum of 12 contact hours for authoring a published, peer-reviewed article;

(I) a maximum of 12 contact hours for authoring a textbook chapter;

(J) a maximum of ten contact hours for personal or group study of a scholarly peer-reviewed journal article;

(K) a maximum of six contact hours for authoring a non-peer reviewed article or abstract of published literature or book review; and

(L) 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.

(e) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.

(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-305. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary physical therapist or temporary physical therapist assistant license to a person who meets all qualifications for licensure as a physical therapist or physical therapist assistant except for the passing of the required examination, if the applicant:

(a) submits a complete application for licensure as a physical therapist or physical therapist assistant except the passing of the NPTE examination;

(b) is a graduate of a CAPTE accredited physical therapy school within three months immediately preceding application for licensure;

(c) is under the direct, on-site supervision of a physical therapist with an active, non-temporary license if employed as a physical therapist; and

(d) has registered to take the required licensure examination.

(2) A temporary physical therapist or temporary physical therapist assistant 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 the examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) A temporary physical therapist or temporary physical therapist assistant license issued in accordance with this section cannot be renewed or extended.

R156-24b-308. Reinstatement of a Physical Therapist or Physical Therapist Assistant License which has Expired Beyond Two Years.

In addition to the requirements established in Section R156-1-308g and in accordance with Subsection 58-1-308(6), an applicant for reinstatement for licensure as a physical therapist or physical therapist assistant, whose license has been expired for two or more years, shall complete one or more of the following upon request of the Division in collaboration with the Board:

(1) meet with the Board to evaluate the applicant's ability to safely and competently practice physical therapy;

(2) pass the NPTE examination of the FSBPT if it is determined that examination or reexamination is necessary to verify the applicant's ability to safely and competently practice; and

(3) establish and carry out a plan of supervision under an approved supervisor which may include up to 4,000 hours of physical therapy training under a temporary physical therapist or physical therapist assistant license before qualifying for full reinstatement of the license.

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 November 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 November 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 but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

R156-24b-505. Trigger Point Dry Needling - Education and Experience Required - Registration.

(1) A course approved by one of the following organizations meets the standards of Section 58-24b-505 if it includes the hours and treatment sessions specified in Section 58-24b-505:

(a) American Physical Therapy Association (APTA) or any of its sections or local chapters; or

(b) Federation of State Boards of Physical Therapy (FSBPT).

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

December 29, 2016	**58-24b-101**
Notice of Continuation October 6, 2016	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rule.
R156-31b-101. Title.

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

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(3) "APRN" means advanced practice registered nurse.

(4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(5) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection R156-31b-102(7);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;

(d) continuing education approved by any state board of nursing; or

(e) training or educational presentations offered by the Division.

(6) "Approved education program" means any nursing education program that meets the standards established in Section 58-31b-601 or Section R156-31b-602.

(7) "Approved re-entry program" means:

(a) a program designed to evaluate nursing competencies for nurses;

(b) approved by a state board of nursing; or

(c) offered by an accredited nursing education program; and

(d) includes a minimum of 150 hours of supervised clinical learning.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to this Subsection (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions; and

(iv) evaluate any possible need to communicate and consult with other health team members.

(10) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(11) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or

(c) to transfer to an unlicensed person the authority to perform a task that, according to generally-accepted industry standards or law, does not require a nursing assessment as defined in Sections R156-31b-102(8) and (14).

(12) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(13) "Delegator" means a person who assigns to another the authority to perform a task on behalf of the person.

(14)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(15) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(16) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(17) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(18) "Licensure by equivalency" applies only to the licensed practical nurse and may be warranted if the person seeking licensure:

(a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and

(ii) has been unsuccessful on the NCLEX-RN at least one time; or

(b)(i) is currently enrolled in an accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.

(19) "LPN" means licensed practical nurse.

(20) "MAC" means medication aide certified.

(21) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(22) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(23) "Non-approved education program" means any nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(24) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b as:
(i) a licensed practical nurse;
(ii) a registered nurse;
(iii) an advanced practice registered nurse; or
(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or
(b) a certified nurse midwife licensed under Title 58, Chapter 44a.
(25) "Other specified health care professionals," as used in Subsection 58-31b-102(15), means an individual, in addition to a registered nurse or a licensed physician, who is permitted to direct the tasks of a licensed practical nurse, and includes:
(a) an advanced practice registered nurse;
(b) a certified nurse midwife;
(c) a chiropractic physician;
(d) a dentist;
(e) an osteopathic physician;
(f) a physician assistant;
(g) a podiatric physician;
(h) an optometrist;
(i) a naturopathic physician; or
(j) a mental health therapist as defined in Subsection 58-60-102(5).
(26) "Patient" means one or more individuals:
(a) who receive medical and/or nursing care; and
(b) to whom a licensee owes a duty of care.
(27) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:
(a) a parent;
(b) a foster parent;
(c) a legal guardian; or
(d) a person legally designated as the patient's attorney-in-fact.
(28) "PN" means an unlicensed practical nurse.
(29) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.
(30) "Practica" means working in the nursing field as a student; not exclusive to patient care activities.
(31) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.
(32) "RN" means a registered nurse.
(33) "School" means any private or public institution of primary or secondary education, including a charter school, preschool, kindergarten, or special education program.
(34) "Supervision" is as defined in Subsection R156-1-102a(4).
(35) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b is further defined in Section R156-31b-502.

R156-31b-103. Authority -- Purpose.
This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 31b.

R156-31b-104. Organization -- Relationship to Rule R156-1.
The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-31b-201. Board of Nursing -- Membership.
In accordance with Subsection 58-31b-201(1), the Board membership shall comprise:
(1) one licensed practical nurse;
(2) two advanced practice registered nurses, at least one of whom is an APRN-CRNA;
(3) four RNs;
(4) two additional members licensed either as RNs or APRNs who are actively involved in nursing education; and
(5) two public members.

R156-31b-202. Advisory Peer Education Committee Created - Membership - Duties.
(1) In accordance with Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.
(2) The duties and responsibilities of the Advisory Peer Education Committee are to:
(a) review applications for approval of medication aide training programs;
(b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and
(c) advise the Division as to nursing education issues.
(3) The composition of the Advisory Peer Education Committee shall be:
(a) seven RNs or APRNs actively involved in nursing education, including at least one representative from public, private, and proprietary nursing programs; and
(b) any member of the Board who wishes to serve on the committee.

R156-31b-301. License Classifications - Professional Upgrade.
(1) A licensed practical nurse license shall be superseded upon the issuance of a registered nurse license.
(2) An advanced practice registered nurse may hold both an APRN and an RN license in Utah.
(3) Unless the APRN requests that both the APRN and RN licenses remain active, the registered nurse license shall be superseded upon the issuance of an advanced practice registered nurse license.

R156-31b-301a. LPN License -- Education, Examination, and Experience Requirements.
(1) An applicant who has never obtained a license in any state or country shall:
(a) demonstrate that the applicant:
(i) has successfully completed a PN prelicensing education program that meets the requirements of Section 58-31b-601;
(ii) has successfully completed a PN prelicensing education program that is equivalent to an approved program under Section 58-31b-601;
(iii)(A) has completed an RN prelicensing education program that meets the requirements of Section 58-31b-601; and
(B) has taken, but not passed the NCLEX-RN at least one time; or
(v)(A) is enrolled in a registered nurse education program that meets the requirements of Section 58-31b-601; and
(B) has completed coursework that is equivalent to the coursework of an accredited practical nurse program;
(b) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and
(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.
(2) An applicant who holds a current LPN license issued by another country or state shall:
(a) demonstrate that the license issued by the other jurisdiction is active and in good standing as of the date of application;
(b) demonstrate that the PN prelicensing education completed by the applicant:
(i) is equivalent to PN prelicensing education approved in Utah as of the date of the applicant's graduation; and
(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;
(c) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current LPN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301a(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-PN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-PN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b); and

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301b. RN License -- Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant has successfully completed an RN prelicensing education program that:

(i) meets the requirements of Section 58-31b-601; or

(ii) is equivalent to an approved program under Section 58-31b-601;

(b) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current RN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;

(b)(i) demonstrate that the applicant has graduated from an RN prelicensing education program; and

(ii) if a foreign education program, demonstrate that the program meets all requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current RN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301b(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-RN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-RN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b);

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301c. APRN License -- Education, Examination, and Experience Requirements.

(1) An applicant who is not currently and validly licensed as an APRN in any state or country shall:

(a) demonstrate that the applicant holds a current, active RN license in good standing;

(b) demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsection 58-31b-601(1) and Subsection 58-31b-302(4)(e);

(c) pass a national certification examination consistent with the applicant's educational specialty, pursuant to Section R156-31b-301e, and administered by one of the following credentialing bodies:

(i) the American Nurses Credentialing Center Certification;

(ii) the Pediatric Nursing Certification Board;

(iii) the American Association of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the American Midwifery Certification Board, Inc.; or

(vi) the National Board of Certification and Recertification for Nurse Anesthetists;

(d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the requirements outlined in this Subsection (2) are met; and

(e) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) Requirements for APRN Specializing in Psychiatric Mental Health Nursing:

(a) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows.

(i) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(ii) The remaining 3,000 hours shall:

(A) be completed after passing the applicable national certification examination and within five years of graduation from an accredited master's or doctoral level educational program;

(B) include a minimum of 1,000 hours of mental health therapy practice; and

(C) include at least 2,000 clinical practice hours that are completed under the supervision of:

(I) an APRN specializing in psychiatric mental health

nursing; or

(II) a licensed mental health therapist as delegated by the supervising APRN.

(b) An applicant who obtains all or part of the clinical practice hours outside of Utah may receive credit for that experience by demonstrating that the training completed is equivalent in all respects to the training required under this Subsection (2)(a).

(c)(i) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(ii) Duties and responsibilities of a supervisor include:

(A) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(B) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

(C) submitting appropriate documentation to the Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(3) An applicant who holds a current APRN license issued by another state or country shall:

(a) demonstrate that the license issued by the other state or country is current, active, and in good standing as of the date of application;

(b) demonstrate that the APRN prelicensing education completed by the applicant:

(i) if completed on or after January 1, 1987:

(A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or

(B) constitutes a bachelor degree in nursing; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three-year period immediately preceding the date of application; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(4) An applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall:

(a) demonstrate current certification in the individual's specialty area; and

(b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (3)(b);

(b) demonstrate that the applicant is currently certified in the individual's specialty area; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301d. Foreign Education Programs.

An applicant whose prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, shall demonstrate:

(1)(a) that all three components of the CGFNS certification process and the credentials evaluation service professional report have been completed so as to demonstrate that the courses completed are substantially equivalent to coursework of approved education programs as of the date of the applicant's graduation;

(b) that at least one of the following practice requirements has been met within the five-year period preceding the date of application:

(i) the applicant has practiced as a licensed nurse for a minimum of 960 hours in a state or territory of the United States;

(ii) the applicant has completed a Board-approved refresher course;

(iii) the applicant has obtained an advanced (master's or doctorate) nursing degree; or

(iv) the applicant has qualified for and obtained a license upgrade (LPN to RN or RN to APRN); and

(c) that the applicant has achieved a passing score on an approved English proficiency test prior to the date of application; or

(2)(a) that the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States during the five-year period immediately preceding the date of application; and

(b) that the applicant has achieved a passing score on an approved English proficiency test prior to the date of application.

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the nurse education program, except as provided in Subsection (1)(b).

(b) An individual specializing in psychiatric mental health nursing shall complete the applicable certification examination prior to beginning the 3,000 hours of required psychiatric clinical and mental health therapy practice.

(c) An individual who does not pass the applicable licensure or certification examination pursuant to this Subsection (1)(a) or (b) as applicable shall complete another approved nursing education program before again attempting to pass the licensure or certification examination.

(2) An applicant for certification as an MAC shall pass the NCSBN Medication Aide Certification Examination (MACE) within one year of completing the approved training program.

(3) The examinations required under these rules are national examinations and cannot be challenged before the Division.

R156-31b-301f. Licensing Fees.

An applicant for licensure shall pay the applicable nonrefundable application fee before the application may be considered by the Division or Board.

R156-31b-301g. Criminal Background Checks.

A criminal background check conducted during the application process is considered current and acceptable for that specific application only.

R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308a.

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

(3) Each applicant for renewal shall comply with the following continuing competency requirements:

(a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and

completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall comply with the following:

(i)(A) be currently certified or recertified in the licensee's specialty area of practice; or

(B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(ii) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.

(c) An MAC shall complete eight contact hours of approved continuing education related to medications or medication administration during the two-year period immediately preceding the application for renewal.

(4) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:

(a) comply with the competency requirements of this Subsection (3)(a);

(b) pay all required fees, including any applicable late fees;

(c) submit a completed renewal or reinstatement form as applicable to the license desired; and

(d) complete and sign a license surrender document as provided by the Division.

(5) A licensee who obtained a license downgrade may apply for license upgrade by:

(i) submitting the appropriate application for licensure complete with all supporting documents as required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(ii) meeting the continuing competency requirements of this Subsection (3); and

(iii) paying the established license fee for a new applicant for licensure.

R156-31b-309. APRN Intern License.

(1) An individual who has completed all requirements outlined in Subsection R156-31b-301c(1) except the certification examination requirement may apply for an APRN intern license.

(2) In accordance with Section 58-31b-306, and unless this Subsection (3) or (4) applies, an intern license expires the earlier of:

(a) 180 days from the date of issuance;

(b) 30 days after the Division receives notice pursuant to this Subsection (4) that the applicant has failed the specialty certification examination; or

(c) upon issuance of an APRN license.

(3) The Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(4) An individual holding an APRN intern license specializing in psychiatric mental health nursing must work under the supervision of an APRN pursuant to R156-31b-301c.

(5) It is the professional responsibility of an APRN intern:

(a) to inform the Division of examination results within ten calendar days of receipt; and

(b) to cause the examination agency to send the examination results directly to the Division.

R156-31b-402. Administrative Penalties.

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-801 and R156-31b-502 and Subsection 58-31b-102(1), and unless otherwise ordered by the presiding officer, the following fine schedule shall apply to a nurse or MAC.

(1) Initial and second offenses.

(a) Using a protected title, name, or initials, if the user is not properly licensed under this chapter, in violation of Subsection 58-31b-501(1):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(b) Using any name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter, in violation of Subsection 58-31b-501(2):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(c) Conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601 or Subsection R156-31b-602, in violation of Subsection 58-31b-501(3):

initial offense: $2,000 - $7,500

second offense: $7,500 - $9,500

(d) Practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the practice of nursing, if the person is not licensed to do so or exempted from licensure under Utah Code 58-31b et seq. or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license, or in violation of restrictions that have been placed on a license, in violation of Subsection 58-1-501(1)(a):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(e) Impersonating another licensee, or practicing an occupation or profession under a false or assumed name, in violation of Subsection 58-1-501(1)(b):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(f) Knowingly employing a person to practice or engage in or attempt to practice or engage in the practice of nursing if the employee is not licensed to do so, in violation of Subsection 58-1-501(1)(c):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(g) Knowingly permitting the person's authority to engage in the practice of nursing to be used by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(h) Obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(i) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state without prescriptive authority conferred by a license, or by an exception to licensure; or with prescriptive authority conferred by an exception or a multistate practice privilege, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(1)(f)(i):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(j) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating the practice of nursing, in violation of Subsection 58-1-501(2)(a):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(k) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard

applicable to the practice of nursing, in violation of Subsection 58-1-501(2)(b):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(l) Engaging in conduct that results in conviction or a plea of nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the practice of nursing, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the profession, in violation of Subsection 58-1-501(2)(c):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(m) Engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the profession of nursing if the conduct would, in the state of Utah, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, in violation of Subsection 58-1-501(2)(d):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(n) Engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in practice of the nursing profession, in violation of Subsection 58-1-501(2)(e):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(o) Practicing or attempting to practice the profession of nursing despite being physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(p) Practicing or attempting to practice the profession of nursing through gross incompetence, gross negligence, or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(q) Practicing or attempting to practice the profession of nursing by any form of action or communication which is false, misleading, deceptive, or fraudulent, in violation of Subsection 58-1-501(2)(h):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(r) Practicing or attempting to practice the profession of nursing beyond the individual's scope of competency, abilities, or education, in violation of Subsection 58-1-501(2)(i):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(s) Practicing or attempting to practice the profession of nursing beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(t) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice in the profession of nursing or otherwise facilitated by the licensee's license, in violation of Subsection 58-1-501(2)(k):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(u) Acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or under these rules, in violation of Subsection 58-1-502(2)(l):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(v) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(2)(m):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(w) Failing to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position, in violation of Subsection 58-31b-502(1):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(x) Failing to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, gender, or nature of the patient's health problem, in violation of Subsection 58-31b-502(2):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(y) Engaging in sexual relations with a patient, in violation of Subsection 58-31b-502(3):
initial offense: $4,000 - $8,000
second offense: $8,000 - $10,000
(z) Exploiting or using information about a patient or exploiting the professional relationship by use of knowledge of the patient obtained while practicing the occupation or profession, in violation of Subsection 58-31b-502(4):
initial offense: $2,000 - $5,000
second offense: $5,000 - $10,000
(aa) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug, in violation of Subsection 58-31b-502(5):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(bb) Unauthorized taking or personal use of nursing supplies from an employer, in violation of Subsection 58-31b-502(6):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(cc) Unauthorized taking or personal use of a patient's personal property, in violation of Subsection 58-31b-502(7):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(dd) Knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any circumstance related to the patient and the medical or nursing care provided, in violation of Subsection 58-31b-502(8):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ee) Unlawful or inappropriate delegation of nursing care, in violation of Subsection 58-31b-502(9):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ff) Failing to exercise appropriate supervision of persons

providing patient care services under supervision of the licensed nurse, in violation of Subsection 58-31b-502(10):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(gg) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice as a nurse or MAC, in violation of Subsection 58-31b-502(11):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(hh) Failing to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report, in violation of Subsection 58-31b-502(12):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ii) Breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, in violation of Subsection 58-31b-502(13):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(jj) Failing to pay a penalty imposed by the Division, in violation of Subsection 58-31b-502(14): double the original penalty amount up to $20,000
(kk) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan, in violation of Subsection 58-31b-502(15):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(ll) Failing to confine practice within the limits of competency, in violation of Section 58-31b-801:
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(mm) Engaging in any other conduct which constitutes unprofessional or unlawful conduct, in violation of Subsection 58-1-501(1) or (2):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(nn) Engaging in a sexual relationship with a patient surrogate concurrent with the professional relationship, in violation of Subsection R156-31b-502(1)(e):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(oo) Failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license, in violation of Subsection R156-31b-502(1)(a):
initial offense: $500 - $4,000
second offense: $4,000 - $8,000
(pp) Knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information, in violation of Subsection R156-31b-502(1)(b):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(qq) Engaging in practice in a disruptive manner, in violation of Subsection R156-31b-502(1)(f):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(rr) Violating the term of an order governing a license, in violation of Subsection 58-1-501(2)(o):
initial offense: $250 - $4,000
second offense: $4,000 - $8,000
(2) Subsequent offenses. Sanctions for an offense subsequent to the second offense, shall be $10,000 or $2,000 per day.

R156-31b-502. Unprofessional Conduct.
(1) "Unprofessional conduct" includes:
(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;
(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;
(c) as to an RN or LPN, issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise legally permissible;
(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:
(i) that standards of nursing practice are established and carried out;
(ii) that safe and effective nursing care is provided to patients;
(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or
(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;
(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:
(i) did not result in any form of abuse or exploitation of the surrogate or patient; and
(ii) did not adversely alter or affect in any way:
(A) the nurse's professional judgment in treating the patient;
(B) the nature of the nurse's relationship with the surrogate; or
(C) the nature of the nurse's relationship with the patient;
(f) engaging in disruptive behavior in the practice of nursing;
(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-501(1)(a); and
(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502.
(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs.
(1)(a) Pursuant to Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program was granted limited-time approval on or before May 15, 2016 and had demonstrated to the satisfaction of the Board that the program:
(i) established a timeline which allows for the initial accreditation visit to occur before the first students graduate;
(ii) understands the accreditation standards of its selected accrediting body as demonstrated in a written report which includes plans and processes consistent with the accrediting body for:
(A) curricular organization and delivery method;
(B) student learning outcomes;
(C) student support;
(D) program administration and organization;
(E) learning environment and facilities;
(F) clinical learning and placements; and

(G) faculty and nurse administrator qualifications;

(iii) clearly informs students and potential students about its accreditation status and the potential implications for future practice; and

(2) The provider of a program with limited-time approval pursuant to this Subsection (1) and (2) shall, pursuant to this Subsection (3), disclose to each student who enrolls:

(a) that program accreditation is pending;

(b) that any education completed prior to the accrediting body's final determination will satisfy, at least in part, state requirements for prelicensing education; and

(c) that, if the program fails to achieve accreditation on or before December 31, 2020, any student who has not yet graduated will not be made eligible for the NCLEX by the state of Utah.

(3) The disclosure required by this Subsection (2) shall:

(a) be signed by each student who enrolls with the provider; and

(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (accrediting body). Any education you complete prior to December 31, 2020 or a final determination by the (accrediting body) will satisfy associated state requirements for licensure. If the (accrediting body) ultimately determines that the program does not qualify for accreditation, you will not be made eligible for the NCLEX by the state of Utah."

(4) If an accredited program receives notice or determines that its accreditation status is in jeopardy, the institution offering the program shall:

(a) immediately notify the Board of its accreditation status;

(b) immediately and verifiably notify all enrolled students in writing of the program's accreditation status, including:

(i) the estimated date on which the accrediting body will make its final determination as to the program's accreditation; and

(ii) the potential impact of a program's accreditation status on the graduate's ability to secure licensure and employment or transfer academic credits to another institution in the future; and

(c) attempt negotiations with other academic institutions to establish a transfer articulation agreement.

(5) If a program with limited-time approval fails to achieve accreditation by December 31, 2020 or if a program loses its accreditation, the institution offering the program shall:

(a) submit a written report to the Board within ten days of receiving formal notification from the accrediting body;

(b) notify all matriculated and pre-enrollment nursing students about the program's accreditation status;

(c) inform all nursing students who will graduate from a non-accredited program that they will not be eligible for initial licensure through Utah; and

(d) submit a written plan to close the program and cease operations, if necessary.

R156-31b-603. Education Providers -- Requirements for Ongoing Communication with the Board.

An education program that has achieved limited-time approval of its program(s) shall provide to the Board:

(1) a Board-approved annual report by December 31 of each calendar year; and

(2) copies of any correspondence between the program provider and the accrediting body within 30 days of receipt or submission of the correspondence.

R156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

A nursing education program provider located in another state that desires to place nursing students in Utah agencies or institutions for clinical or practica experiences shall, prior to placing a student, demonstrate to the satisfaction of the Division and Board that the program:

(1) is approved by the home state Board of Nursing;

(2) is accredited by an accrediting body for nursing education that is approved by the United States Department of Education;

(3) has faculty who:

(a) are employed by the nursing education program;

(b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing;

(c) are licensed in good standing in Utah or a Compact state if supervising face-to-face clinical or practica experiences; and

(d) are affiliated with an institution of higher education; and

(4) has a plan for selection and supervision of:

(a) faculty or preceptor; and

(b) the clinical activity, including:

(i) the selection of an appropriate clinical location, and

(ii) ensuring that each preceptor is licensed in good standing in Utah or a Compact state;

(5) maintains its accreditation with an accrediting body for nursing education that is approved by the United States Department of Education; and

(a) reports any changes in its accreditation status to the Utah Board of Nursing in a timely manner;

(6) submits an annual report to the Utah Board of Nursing by August 1 of each year; and

(a) includes in the annual report:

(i) an overview of the number of students placed in Utah facilities;

(ii) an attestation that all face-to-face clinical faculty and preceptors used by the program are licensed in good standing in Utah or a Compact state; and

(iii) a verification that it is currently accredited, in good standing, with its accrediting body.

R156-31b-701. Delegation of Nursing Tasks in a Non-school Setting.

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1)(a) The delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.

(b) The delegator may not delegate to unlicensed assistive personnel, including a physician's medical assistant, any task requiring the specialized knowledge, judgment, or skill of a licensed nurse.

(c) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances.

(d) A delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

(ii) outside the delegator's personal knowledge, skills, or ability; or

(iii) beyond the ability or competence of the delegatee to perform:

(A) as personally known by the delegator; and

(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.

(e) In delegating a nursing task, the delegator shall:

(i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;

(ii) provide ongoing appropriate supervision and evaluation of the delegatee who is performing the task;

(iii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to

what time frame;

(iv) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task;

(v) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee; and

(vi)(A) evaluate the following factors to determine the degree of supervision required to ensure safe care:

(I) the stability and condition of the patient;

(II) the training, capability, and willingness of the delegatee to perform the delegated task;

(III) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

(IV) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and

(V) any immediate risk to the patient if the task is not carried out; and

(B) ensure that the delegator or another qualified nurse is readily available either in person or by telecommunication to:

(I) evaluate the patient's health status;

(II) evaluate the performance of the delegated task;

(III) determine whether goals are being met; and

(IV) determine the appropriateness of continuing delegation of the task.

(2) Nursing tasks that may be delegated shall meet the following criteria as applied to each specific patient situation:

(a) be considered routine care for the specific patient;

(b) pose little potential hazard for the patient;

(c) be generally expected to produce a predictable outcome for the patient;

(d) be administered according to a previously developed plan of care; and

(e) be limited to those tasks that do not inherently involve nursing judgment that cannot be separated from the procedure.

(3) If the nurse, upon review of the patient's condition, the complexity of the task, the ability of the proposed delegatee, and other criteria established in this Subsection, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.

(4) A delegatee may not:

(a) further delegate to another person any task delegated to the individual by the delegator; or

(b) expand the scope of the delegated task without the express permission of the delegator.

(5) Tasks that, according to the internal policies or practices of a medical facility, are required or allowed to be performed by an unlicensed person shall not be deemed to have been delegated by a licensee.

R156-31b-701a. Delegation of Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of tasks in a school setting is further defined, clarified, or established as follows:

(1) Before a registered nurse may delegate a task that is required to be performed within a school setting, the registered nurse shall:

(a) develop, in conjunction with the applicable student, parent(s) or parent surrogate(s), educator(s), and healthcare provider(s) an IHP; and

(b) ensure that the IHP is available to school personnel.

(2) Any task being delegated by a registered nurse shall be identified within the patient's current IHP.

(3)(a) A registered nurse shall personally train any unlicensed person who will be delegated the task of administering medications that are routine for the student.

(b) The training required under this Subsection (3)(a) shall be performed at least annually.

(c) A registered nurse may not delegate to an unlicensed person the administration of any medication:

(i) with known, frequent side effects that can be life threatening;

(ii) that requires the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug;

(iii) that is being administered as a first dose:

(A) of a new medication; or

(B) after a dosage change; or

(iv) that requires nursing assessment or judgment prior to or immediately after administration.

(d) In addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed person who has been properly trained regarding a diabetic student's IHP:

(i) the administration of a scheduled dose of insulin; and

(ii) the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

R156-31b-703a. Standards of Professional Accountability.

The following standards apply equally to the LPN, RN, and APRN licenses. In demonstrating professional accountability, a licensee shall:

(1) practice within the legal boundaries that apply to nursing;

(2) comply with all applicable statutes and rules;

(3) demonstrate honesty and integrity in nursing practice;

(4) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(5) seek clarification of orders when needed;

(6) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(7) demonstrate attentiveness in delivering nursing care;

(8) implement patient care, including medication administration, properly and in a timely manner;

(9) document all care provided;

(10) communicate to other health team members relevant and timely patient information, including:

(a) patient status and progress;

(b) patient response or lack of response to therapies;

(c) significant changes in patient condition; and

(d) patient needs;

(11) take preventive measures to protect patient, others, and self;

(12) respect patients' rights, concerns, decisions, and dignity;

(13) promote a safe patient environment;

(14) maintain appropriate professional boundaries;

(15) contribute to the implementation of an integrated health care plan;

(16) respect patient property and the property of others;

(17) protect confidential information unless obligated by law to disclose the information;

(18) accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of nursing practice; and

(19) maintain continued competence through ongoing learning and application of knowledge in each patient's interest.

R156-31b-703b. Scope of Nursing Practice Implementation.

(1) LPN. An LPN shall be expected to:

(a) conduct a focused nursing assessment;

(b) plan for and implement nursing care within limits of competency;

(c) conduct patient surveillance and monitoring;

(d) assist in identifying patient needs;

(e) assist in evaluating nursing care;

(f) participate in nursing management by:
(i) assigning appropriate nursing activities to other LPNs;
(ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;
(iii) observing nursing measures and providing feedback to nursing managers; and
(iv) observing and communicating outcomes of delegated and assigned tasks; and
(g) serve as faculty in area(s) of competence.
(2) RN. An RN shall be expected to:
(a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:
(i) complete a comprehensive nursing assessment; and
(ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;
(b) detect faulty or missing patient information;
(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;
(d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;
(e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;
(f) correctly identify changes in each patient's health status;
(g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;
(h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative interventions;
(i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;
(j) appropriately advocate for patients by:
(i) respecting patients' rights, concerns, decisions, and dignity;
(ii) identifying patient needs;
(iii) attending to patient concerns or requests; and
(iv) promoting a safe and therapeutic environment by:
(A) providing appropriate monitoring and surveillance of the care environment;
(B) identifying unsafe care situations; and
(C) correcting problems or referring problems to appropriate management level when needed;
(k) communicate with other health team members regarding patient choices, concerns, and special needs, including:
(i) patient status and progress;
(ii) patient response or lack of response to therapies; and
(iii) significant changes in patient condition;
(l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:
(i) delegating tasks in accordance with these rules and applicable statutes; and
(ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;
(m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;
(n) if acting as a chief administrative nurse:
(i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;
(ii)(A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and
(B) ensure all personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level; and
(iii) ensure that thorough and accurate documentation of personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;
(o) if employed by a department of health:
(i) implement standing orders and protocols; and
(ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620;
(p) serve as faculty in area(s) of competence; and
(q) perform any task within the scope of practice of an LPN.
(3) APRN.
(a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, experience, and certification. The burden to demonstrate competency rests upon the licensee.
(b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN.
(c) An APRN who wishes to practice as an RN is a Compact state must qualify for and obtain an RN Compact license in Utah.

R156-31b-801. Medication Aide Certified -- Formulary and Protocols.

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MAC to administer routine medications are as follows.
(1) Under the supervision of a licensed nurse, an MAC may:
(a) administer over-the-counter medication;
(b) administer prescription medications:
(i) if expressly instructed to do so by the supervising nurse; and
(ii) via approved routes as listed in Subsection 58-31b-102(17)(b);
(c) turn oxygen on and off at a predetermined, established flow rate;
(d) destroy medications per facility policy;
(e) assist a patient with self administration; and
(f) account for controlled substances with another MAC or nurse physically present.
(2) An MAC may not administer medication via the following routes:
(a) central lines;
(b) colostomy;
(c) intramuscular;
(d) subcutaneous;
(e) intrathecal;
(f) intravenous;
(g) nasogastric;
(h) nonmetered inhaler;
(i) intradermal;
(j) urethral;
(k) epidural;
(l) endotracheal; or
(m) gastronomy or jejunostomy tubes.
(3) An MAC may not administer the following kinds of medications:
(a) barium and other diagnostic contrast;
(b) chemotherapeutic agents except oral maintenance chemotherapy;
(c) medication pumps including client controlled analgesia; and
(d) nitroglycerin paste.

(4) An MAC may not:

(a) administer any medication that requires nursing assessment or judgment prior to administration, through ongoing evaluation, or during follow-up;

(b) receive written or verbal patient orders from a licensed practitioner;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the supervising nurse;

(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or

(h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present.

(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate to an MAC the administration of medications to a specific patient or in a specific situation.

(6)(a) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MACs per shift.

(b) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise as many as four MACs per shift.

R156-31b-802. Medication Aide Certified -- Approval of Training Programs.

In accordance with Subsection 58-31b-601(3), the minimum standards for an MAC training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to the program being implemented.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of at least:

(a) 60 clock hours of didactic (classroom) training that is consistent with the model curriculum set forth in Section R156-31b-803; and

(b) 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a)(i) have a current, active, LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(ii) have at least one year of clinical experience; or

(b)(i) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(ii) have at least one year of clinical experience.

(5)(a) The on-site practical training experience instructor shall meet the following criteria:

(i)(A) have a current, active, LPN, RN or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(B) have at least one year of clinical experience; or

(ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(B) have at least one year of clinical experience.

(b) The practical training instructor-to-student ratio shall be no greater than:

(i) 1:2 if the instructor is working with individual students to administer medications; or

(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

(c) The on-site practical training experience instructor shall be on site and available at all times if the student is not being directly supervised by a licensed nurse during the practical training experience.

(6) An entity seeking approval to provide an MAC training program shall:

(a) submit to the Division a complete application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum referenced in Section R156-31b-803;

(d) document minimal admission requirements, which shall include:

(i) an earned high school diploma, successful passage of the general educational development (GED) test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed:

(A) as a certified nurse aide working in a long-term care setting; and

(B) within the two-year period preceding the date of application to the training program: and

(iv) current cardiopulmonary resuscitation (CPR) certification.

R156-31b-803. Medication Aide Certified -- Model Curriculum.

A school that offers a medication aide certification program shall follow the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

KEY: licensing, nurses

December 22, 2016	**58-31b-101**
Notice of Continuation March 18, 2013	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rule.
R156-37-101. Title.

This rule is known as the "Utah Controlled Substances Act Rule."

R156-37-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or this rule:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

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

(3) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.

(4) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

(5) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(1)(e) and 58-37-6(1)(a), in Section R156-37-502.

R156-37-103. Purpose - Authority.

This rule is adopted by the Division under the authority of Subsections 58-1-106(1)(a) and 58-37-6(1)(a) to enable the Division to administer Title 58, Chapter 37.

R156-37-104. 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.

R156-37-301. License Classifications - Restrictions.

(1) Consistent with the provisions of law, the Division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

(a) pharmacist;
(b) optometrist;
(c) podiatric physician;
(d) dentist;
(e) osteopathic physician and surgeon;
(f) physician and surgeon;
(g) physician assistant;
(h) veterinarian;
(i) advanced practice registered nurse or advanced practice registered nurse-certified registered nurse anesthetist;
(j) certified nurse midwife;
(k) naturopathic physician;
(l) Class A pharmacy-retail operations located in Utah;
(m) Class B pharmacy located in Utah providing services to a target population unique to the needs of the healthcare services required by the patient, including:
(i) closed door pharmacy;
(ii) hospital clinic pharmacy;
(iii) methadone clinic pharmacy;
(iv) nuclear pharmacy;
(v) branch pharmacy;
(vi) hospice facility pharmacy;
(vii) veterinarian pharmaceutical facility pharmacy;
(viii) pharmaceutical administration facility pharmacy;
(ix) sterile product preparation facility pharmacy; and
(x) dispensing medical practitioner clinic pharmacy.
(n) Class C pharmacy engaged in:
(i) manufacturing;
(ii) producing;
(iii) wholesaling;
(iv) distributing; and
(v) reverse distributing.
(o) Class D Out-of-state mail order pharmacies.
(p) Class E pharmacy including:
(i) medical gases provider;
(ii) analytical laboratory pharmacy;
(iii) animal control pharmacy;
(iv) human clinical investigational drug research facility pharmacy; and
(v) animal narcotic detection training facility pharmacy.
(q) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the Division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the Division.

R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:
(a) submit an application in a form as prescribed by the Division; and
(b) shall pay the required fee as established by the Division under the provisions of Section 63J-1-504.

(2) Any person seeking a controlled substance license shall be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license.

(3) The Division and the reviewing board may request from the applicant information that is reasonable and necessary to permit an evaluation of the applicant's:
(a) qualifications to engage in practice with controlled substances; and
(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the Division may assign the application to a qualified and appropriate licensing board for review and recommendation to the Division with respect to issuance of a license.

R156-37-303. Qualifications for Licensure - Site Inspections - Investigations.

The Division shall have the right to conduct site inspections, review research protocol, conduct interviews with persons knowledgeable about the applicant, and conduct any other investigation which is reasonable and necessary to determine the applicant is of good moral character and qualified to receive a controlled substance license.

R156-37-305. Qualification for Licensure -- Drug Enforcement Administration (DEA) Registration.

(1) An individual who obtains a controlled substance license except those individuals described in Subsection (2) below, shall obtain a DEA registration within 120 days of the date the controlled substance license is issued.

(2) Any controlled substance licensee who obtains prior written consent of the licensee's employer to use the employer's hospital or institution DEA registration to administer and/or prescribe controlled substances, is not required to obtain an individual practitioner DEA registration.

R156-37-306. Exemption from Licensure -- Law Enforcement Personnel, University Research, Narcotic Detection Training of Animals, and Animal Control.

In accordance with Subsection 58-37-6(2)(d), the following persons are exempt from licensure under Title 58, Chapter 37:

(1) Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances that come into their possession; and they maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

(2) Individuals and entities engaged in research using pharmaceuticals as defined in Subsection 58-17b-102(65) within a research facility as defined in Subsection R156-17b-102(49).

(3) Individuals employed by a facility engaged in the following activities if the facility employing that individual has a controlled substance license in Utah, a DEA registration number, and uses the controlled substances according to a written protocol:

(a) narcotic detection training of animals for law enforcement use; or

(b) animal control, including:

(i) animal euthanasia; or

(ii) animal immobilization.

R156-37-401. Grounds for Denial of License - Disciplinary Proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

R156-37-402. Continuing Professional Education for Controlled Substance Prescribers.

In accordance with Section 58-37-6.5, qualified continuing professional education requirements for controlled substance prescribers are further established as follows:

(1) Continuing education under this section shall:

(a) be prepared and presented by individuals who are qualified by education, training and experience to provide the controlled substance prescriber continuing education; and

(b) have a method of verification of attendance and a post course knowledge assessment or examination.

(2) In accordance with Subsections 58-37-65.(5), 58-37-6.5(7), and 58-37-6.5(8), the controlled substance prescribing classes that satisfy the division's continuing education requirements for license renewal, and that are delivered by an accredited or approved continuing education provider recognized by the division as offering appropriate continuing education, shall be posted on the division's website at http://dopl.utah.gov/.

(3) Credit for continuing education shall be recognized as follows:

(a) Unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes;

(b) Continuing education hours for licensees who have not been licensed for the entire two-year period shall be prorated from the date of licensure;

(c) In accordance with Subsection 58-37f-304(3), the required 1/2 hour of continuing education for the online tutorial and test relating to the controlled substance database shall be waived by the division for a controlled substance prescriber renewing a license, if the prescriber attests on the license renewal form that:

(i) in the past license period, the prescriber accessed the controlled substance database; and

(ii) upon the prescriber's information and belief, the prescriber's use of the database reduced the prescribing, dispensing, and use of opioids in an unprofessional or unlawful manner, or in quantities or frequencies inconsistent with generally recognized standards of dosage for an opioid.

(4) A licensee shall maintain 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. The division may review controlled substance database usage by the prescriber or proxy to audit an attestation provided under Subsection R156-37-402(3)(c).

R156-37-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule II or III controlled substance that is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action that revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances that would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so;

(9) failing to obtain a DEA registration within the time frame established in Section R156-37-305.

R156-37-601. Access to Records, Facilities, and Inventory.

Applicants for licensure and all licensees shall make available for inspection to any person authorized to conduct an administrative inspection pursuant to Title 58, Chapter 37, this rule or federal law, to the extent they exist, during regular business hours and at other reasonable times in the event of an emergency, their controlled substance stock or inventory, records required under the Utah Controlled Substances Act and this rule or under the federal controlled substance laws, and facilities related to activities involving controlled substances.

R156-37-602. Records.

(1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be

kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

(2) Any licensee who experiences any shortage or theft of controlled substances shall immediately file the appropriate forms with the Drug Enforcement Administration, with a copy to the Division directed to the attention of the Investigation Bureau. He shall also report the incident to the local law enforcement agency.

(3) All records required by federal and state laws or rules must be maintained by the licensee for a period of five years. If a licensee should sell or transfer ownership of his files in any way, those files shall be maintained separately from other records of the new owner.

(4) Prescription records may be maintained electronically so long as:

(a) the original of each prescription, including telephone prescriptions, is maintained in a physical file and contains all of the information required by federal and state law; and

(b) an automated data processing system is used for the storage and immediate retrieval of refill information for prescription orders for controlled substances in Schedule III and IV, in accordance with federal guidelines.

(5) All records relating to Schedule II controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

(6) All records relating to Schedules III, IV and V controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) In accordance with Subsection 58-37-6(7)(f)(v)(D), unless the prescriber determines there is a valid medical reason to allow an earlier dispensing date, the dispensing date of a second or third prescription shall be no less than 30 days from the dispensing date of the previous prescription, to allow for receipt of the subsequent prescription before the previous prescription runs out.

(4) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(5) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(6) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(7) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(8) Refills after expiration of the original prescription term requires the issuance of a new prescription by the prescribing practitioner.

(9) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(10) A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the Division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the Division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(11) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (10), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

R156-37-604. Prescribing of Controlled Substances for

Weight Reduction or Control.

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe or administer a Schedule IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met:

(a) medication is used only as an adjunct to a comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;

(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program.

R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.

(1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:

(a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;

(b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and

(c) a written prescription is delivered to the pharmacist within seven working days of the verbal order.

(2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:

(a) the amount does not exceed a 72 hour supply; and

(b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

R156-37-606. Disposal of Controlled Substances.

(1) Any disposal of controlled substances by licensees shall be consistent with the provisions of 1307.21 of the Code of Federal Regulations.

(2) Records of disposal of controlled substances shall be maintained and made available on request to the Division or its agents for inspection for a period of five years.

R156-37-607. Surrender of Suspended or Revoked License.

(1) Licenses which have been restricted, suspended or revoked shall be surrendered to the Division within 30 days of the effective date of the order of restriction, suspension or revocation. Compliance with this section will be a consideration in evaluating applications for relicensing.

R156-37-608. Herbal Products.

The Division shall not apply the provisions of the Controlled Substance Act or this rule in restricting citizens or practitioners, regardless of their license status, from the sale or use of food or herbal products that are not scheduled as controlled substances by State or Federal law.

KEY: controlled substances, licensing

December 22, 2016	**58-1-106(1)(a)**
Notice of Continuation February 21, 2012	**58-37-6(1)(a)**
	58-37f-301(1)

R156. Commerce, Occupational and Professional Licensing.
R156-37f. Controlled Substance Database Act Rule.
R156-37f-101. Title.

This rule shall be known as the "Controlled Substance Database Act Rule".

R156-37f-102. Definitions.

In addition to the definitions in Sections 58-17b-102, 58-37-2 and 58-37f-102, as used in this chapter:

(1) "ASAP" means the American Society for Automation in Pharmacy system.

(2) "DEA" means Drug Enforcement Administration.

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

(4) "NCPDP" means National Council for Prescription Drug Programs.

(5) "NDC" means National Drug Code.

(6) "ORI" means Originating Agency Identifier Number.

(7) "Positive identification" means:

(a) one of the following photo identifications issued by a foreign or domestic government:

(i) driver's license;

(ii) non-driver identification card;

(iii) passport;

(iv) military identification; or

(v) concealed weapons permit; or

(b) if the individual does not have government-issued identification, alternative evidence of the individual's identity as deemed appropriate by the pharmacist, as long as the pharmacist documents in a prescription record a description of how the individual was positively identified.

(8) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

(9) "Rx" means a prescription.

R156-37f-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 37f.

R156-37f-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.

R156-37f-203. Submission, Collection, and Maintenance of Data.

(1) The format used as a guide for submission to the Database shall be in accordance with version 4.2 of the ASAP Telecommunications Format for Controlled Substances published by the American Society for Automation in Pharmacy. The Division may approve alternative formats substantially similar to this standard. This standard is further classified by the Database as follows:

(a) Mandatory Data. The following Database data fields are mandatory:

(i) pharmacy NABP or NCPDP number;

(ii) identification number of person picking up filled prescription;

(iii) patient birth date;

(iv) patient gender code;

(v) date filled;

(vi) Rx number;

(vii) new-refill code;

(viii) metric quantity;

(ix) days supply;

(x) NDC number;

(xi) prescriber identification number;

(xii) date Rx written;

(xiii) number refills authorized;

(xiv) patient last name;

(xv) patient first name;

(xvi) patient address;

(xvii) five-digit zip code; and

(xviii) date sold (point of sale).

(b) Preferred Data. The following Database data fields are strongly suggested:

(i) compound code;

(ii) DEA suffix;

(iii) Rx origin code;

(iv) customer location;

(v) alternate prescriber number;

(vi) state in which the prescription is filled;

(vii) method of payment; and

(viii) dispensing pharmacist state license number.

(c) Optional Data. All other data fields in the ASAP 4.2 Format not included in Subsections (a) and (b) are optional.

(2) Upon request, the Division will consider approving alternative formats, or adjustments to the ASAP Format, as might be necessary due to the capability or functionality of Database collection instruments. A proposed alternative format shall contain all mandatory data elements.

(3) In accordance with Subsection 58-37f-203(1)(a), the data required in Subsection (1) shall be submitted to the Database through one of the following methods:

(a) electronic data sent via a secured internet transfer method, including sFTP site transfer;

(b) secure web base service; or

(c) any other electronic method approved by the Database manager prior to submission.

(4) In accordance with Subsection 58-37f-203(1)(a):

(a) Effective January 1, 2016, each pharmacy or pharmacy group shall submit data collected on a daily basis either in real time or daily batch file reporting. The submitted data shall be from the point of sale (POS) date.

(i) If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled.

(ii) If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled.

(b)(i) A Class A, B, or D pharmacy or pharmacy group that has a controlled substance license but is not dispensing controlled substances and does not anticipate doing so in the immediate future may request a waiver or submit a certification of such, in a form preapproved by the Division, in lieu of daily null reporting.

(ii) The waiver or certification must be resubmitted at the end of each calendar year.

(iii) If a pharmacy or pharmacy group that has submitted a waiver or certification under this Subsection (4)(b) dispenses a controlled substance:

(A) the waiver or certification shall immediately and automatically terminate;

(B) the pharmacy or pharmacy group shall provide written notice of the waiver or certification termination to the Division within seven days of dispensing the controlled substance; and

(C) the Database reporting requirements shall be applicable to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance.

R156-37f-301. Access to Database Information.

In accordance with Subsections 58-37f-301(1)(a) and (b):

(1) The Division Director may designate those individuals employed by the Division who may have access to the information in the Database (Database staff).

(2)(a) A request for information from the Database may be made:

(i) directly to the Database by electronic submission, if the requester is registered to use the Database; or

(ii) by oral or written submission to the Database staff, if the requester is not registered to use the Database.

(b) An oral request may be submitted by telephone or in person.

(c) A written request may be submitted by facsimile, email, regular mail, or in person except as otherwise provided herein.

(d) The Division may in its discretion require a requestor to verify the requestor's identity.

(3) The following Database information may be disseminated to a verified requestor who is permitted to obtain the information:

(a) dispensing/reporting pharmacy ID number/name;

(b) subject's birth date;

(c) date prescription was filled;

(d) prescription (Rx) number;

(e) metric quantity;

(f) days supply;

(g) NDC code/drug name;

(h) prescriber ID/name;

(i) date prescription was written;

(j) subject's last name;

(k) subject's first name; and

(l) subject's street address;

(4)(a) Federal, state and local law enforcement authorities and state and local prosecutors requesting information from the Database under Subsection 58-37f-301(2)(k) must provide a valid search warrant authorized by the courts, which may be provided using one of the following methods:

(i) in person;

(ii) by email to csdb@utah.gov;

(iii) facsimile; or

(iv) U.S. Mail.

(b) Information in the search warrant should be limited to subject's name and birth date.

(c) Information provided as a result of the search warrant shall be in accordance with Subsection (3).

(5) In accordance with Subsection 58-37f-301(2)(n), a probation or parole officer employed by the Department of Corrections or a political subdivision may have access to the database without a search warrant, for supervision of a specific probationer or parolee under the officer's direct supervision, if the following conditions have been met:

(a) a security agreement signed by the officer is submitted to the division for access, which contains:

(i) the agency's name;

(ii) the agency's complete address, including city and zip code;

(iii) the agency's ORI number;

(iv) a copy of the officer's driver's license;

(v) the officer's full name;

(vi) the officer's contact phone number;

(vii) the officer's email address; and

(b) the online database account includes the officer's:

(i) full name;

(ii) email address;

(iii) complete home address, including city and zip code;

(iv) work title;

(v) contact phone number;

(vi) complete work address including city and zip code;

(vii) work phone number; and

(viii) driver's license number.

(6)(a) In accordance with Subsection 58-37f-302(q), an individual may receive an accounting of persons or entities that have requested or received Database information about the individual.

(b) An individual may request the information in person or in writing by the following means:

(i) email;

(ii) facsimile; or

(iii) U.S. Mail.

(c) The request for information shall include the following:

(i) individuals' full name, including all aliases;

(ii) birth date;

(iii) home address;

(iv) government issued identification; and

(v) date-range.

(d) The results may be disseminated in accordance with Subsection (17).

(e) The information provided in the report may include the following:

(i) the role of the person that accessed the information;

(ii) the date and a description of the information that was accessed;

(iii) the name of the person or entity that requested the information; and

(iv) the name of the practitioner on behalf of whom the request for information was made, if applicable.

(7) An individual whose records are contained within the Database may obtain his or her own information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; or

(b) submitting a signed and notarized request that includes the requester's:

(i) full name;

(ii) complete home address;

(iii) date of birth; and

(iv) driver license or state identification card number.

(8) A requester holding power of attorney for an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; and

(b) providing:

(i) an original, properly executed power of attorney designation; and

(ii) a signed and notarized request, executed by the individual whose information is contained within the Database, and including the individual's:

(A) full name;

(B) complete home address;

(C) date of birth; and

(D) driver license or state identification card number verifying the individual's identity.

(9) A requestor who is the legal guardian of a minor or incapacitated individual whose records are contained within the Database may obtain the individual information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity;

(b) submitting the minor or incapacitated individual's:

(i) full name;

(ii) complete home address;

(iii) date of birth; and

(iv) if applicable, state identification card number verifying the individual's identity; and

(c) submitting legal proof that the requestor is the guardian of the individual who is the subject of the request for information from the Database.

(10) A requestor who has a release-of-records from an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) submitting a request in writing;
(b) submitting an original, signed and notarized release-of-records in a format acceptable to the Database staff, identifying the purpose of the release; and
(c) submitting the individual's:
(i) full name;
(ii) complete home address;
(iii) telephone number;
(iv) date of birth; and
(v) driver license or state identification card number verifying the identity of the person who is the subject of the request.

(11) An employee of a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(i)if, prior to making the request:
(a) the licensed practitioner has provided to the Division a written designation that includes the designating practitioner's DEA number and the designated employee's:
(i) full name;
(ii) complete home address;
(iii) e-mail address;
(iv) date of birth;
(v) driver license number or state identification card number; and
(vi) the written designation is manually signed by the licensed practitioner and designated employee.
(b) the designated employee has registered for an account for access to the Database and provided a unique user identification;
(c) the designated employee has passed a Database background check of available criminal court and Database records; and
(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(12) An employee of a business that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(i) if, prior to making the request:
(a) the licensed practitioner and employing business have provided to the Division a written designation that includes:
(i) the designating practitioner's DEA number;
(ii) the name of the employing business; and
(iii) the designated employee's:
(A) full name;
(B) complete home address;
(C) e-mail address;
(D) date of birth; and
(E) driver license number or state identification card number;
(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;
(c) the designated employee has passed a Database background check of available criminal court and Database records; and
(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(13) An individual who is employed in the emergency room of a hospital that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:
(a) the practitioner and the hospital operating the emergency room have provided to the Division a written designation that includes:
(i) the designating practitioner's DEA number;
(ii) the name of the hospital;
(iii) the names of all emergency room practitioners employed at the hospital; and
(iv) the designated employee's:
(A) full name;
(B) complete home address;
(C) e-mail address;
(C) date of birth; and
(D) driver license number or state identification card number;
(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;
(c) the designated employee has passed a Database background check of available criminal court and Database records; and
(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(14) In accordance with Subsection 58-37f-301(5), an individual's requests to the division regarding third-party notice when a controlled substance prescription is dispensed to that individual, shall be made as follows:
(a) A request to provide notice to a third party shall be made in writing dated and signed by the requesting individual, and shall include the following information:
(i) the requesting individual's:
(A) birth date;
(B) complete home address including city and zip code;
(C) email address; and
(D) contact phone number; and
(ii) the designated third party's:
(A) complete home address, including city and zip code;
(B) email address; and
(C) contact phone number.
(b) A request to discontinue providing notice to a designated third party shall be made by a writing dated and signed by the requesting individual, after which the division shall:
(i) provide notice to the requesting individual that the discontinuation notice was received; and
(ii) provide notice to the designated third party that the notification has been rescinded.
(c) A requesting individual may only have one active designated third party.

(15) A licensed pharmacy technician or pharmacy intern employed by a pharmacy may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(l) if, prior to making the request:
(a) the pharmacist-in-charge (PIC) has provided to the Division a written designation authorizing access to the pharmacy technician or pharmacy intern on behalf of a licensed pharmacist employed by the pharmacy;
(b) the written designation includes the pharmacy technician's or pharmacy intern's:
(i) full name;
(ii) professional license number assigned by the Division;
(iii) email address;
(iv) contact phone number;
(v) pharmacy name and location;
(vi) pharmacy DEA number;
(vii) pharmacy phone number;
(c) the written designation includes the pharmacist-in-charge's (PIC's):
(i) full name;
(ii) professional license number assigned by the Division;
(iii) email address;
(iv) contact phone number;
(d) the written designation includes the assigned

pharmacist's:
(i) full name;
(ii) professional license number assigned by the Division;
(iii) email address;
(iv) contact phone number; and
(e) the written designation includes the following signatures:
(i) pharmacy technician or pharmacy intern;
(ii) pharmacist-in-charge (PIC); and
(iii) assigned pharmacist if different than the PIC.
(16) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator shall:
(a) demonstrate to the satisfaction of the Division that the research is part of an approved project of the Utah Department of Health;
(b) provide a description of the research to be conducted, including:
(i) a research protocol for the project; and
(ii) a description of the data needed from the Database to conduct that research;
(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access being strictly restricted to the requesting scientific investigator;
(d) provide for electronic data to be stored on a secure database computer system with access being strictly restricted to the requesting scientific investigator; and
(e) pay all relevant expenses for data transfer and manipulation.
(17) Database information that may be disseminated under Section 58-37f-301 may be disseminated by the Database staff either:
(a) verbally;
(b) by facsimile;
(c) by email;
(d) by U.S. mail; or
(e) by electronic access, where adequate technology is in place to ensure that a record will not be compromised, intercepted, or misdirected.

R156-37f-302. Other Restrictions on Access to Database.
Subsection 58-37f-302(2), which prohibits any individual or organization with lawful access to the data from being compelled to testify with regard to the data, includes deposition testimony.

R156-37f-303. Access to Opioid Prescription Information Via an Electronic Data System.
In accordance with Subsection 58-37f-301(1) and Section 58-37f-303:
(1) Pursuant to Subsection 58-37f-303(4)(a)(i), to access opioid prescription information in the database, an electronic data system just:
(a) interface with the database through the Appriss Prescription Monitoring Program (PMP) Gateway system; and
(b) comply with all restrictions on database access and use of database information, as established by the Utah Controlled Substances Database Act and the Controlled Substance Database Act Rule.
(2) Pursuant to Subsection 58-37f-303(4)(a)(ii), to access opioid prescription information in the database via an electronic data system, an EDS user must:
(a) register to use the database;
(b) use a unique personal identification number (PIN) that is identical to the PIN the EDS user was issued to access database information through the original internet access system;
(c) comply with all restrictions on database access established by the Utah Controlled Substance Database Act and the Controlled Substance Database Act Rule; and
(d) use opioid prescription information in the database only for the purposes and uses designated in Section 58-37f-201, and as more particularly described in the Utah Controlled Substances Database Act and the Controlled Substances Database Act Rule.
(3) The division may immediately suspend, without notice or opportunity to be heard, an electronic data system's or an EDS user's access to the database, if the division determines by audit or other means that such access may lead to a violation of Section 58-37f-601 or may otherwise compromise the integrity, privacy, or security of the database's opioid prescription information. This remedy shall be in addition to the criminal and civil penalties imposed by Section 58-37f-601 for unlawful release or use of database information, and the division's obligation under Subsections 58-37f-303(5) and (6) to immediately suspend or revoke database access and pursue appropriate corrective or disciplinary action against a non-compliant electronic data system or EDS user.

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58-37f-301(1)

R156. Commerce, Occupational and Professional Licensing.
R156-55c. Plumber Licensing Act Rule.
R156-55c-101. Title.

This rule is known as the "Plumber Licensing Act Rule".

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) "Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102(23) and this rule, means the apprentice and the supervising plumber are physically present on the same project or job site but are not required to be within sight of one another.

(2) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) repair or replacement of the following residential type appliances:

(i) dishwashers;

(ii) refrigerators;

(iii) freezers;

(iv) ice makers;

(v) stoves;

(vi) ranges;

(vii) clothes washers; and

(viii) clothes dryers; and

(b) repair or replacement of other plumbing fixtures and appliances inside the occupied space of a structure, when the cost of the repair or replacement does not exceed $300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work.

(3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-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 55.

R156-55c-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.

R156-55c-302a. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

(1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):

(a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302a(4) and (6).

(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);

(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.

(b)(i) 16,000 hours of on the job training and instruction in not less than eight years;

(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iii) the hours shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.

TABLE I
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer and vent lines	2,000
C. Installation of hot and cold water for domestic purposes	1,400
D. Installation and setting of plumbing appliances and fixtures	1,200
E. Maintenance and repair of plumbing	600
F. General pipe work including process and industrial hours	600
G. Gas piping or service piping	400
H. Welding, soldering and brazing as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	100
J. Hydronics piping and equipment installation	300
K. Fire suppression system installation	100

(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):

(a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302a(4) and (6).

(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);

(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

(b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the Division;

(ii) the experience shall be obtained while licensed as an apprentice plumber;

(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;

(iv) the hours shall be in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

TABLE II
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	100
B. Installation of piping for waste, soil, sewer and vent lines	1,600
C. Installation of hot and cold water for domestic purposes	1,200
D. Installation and setting of plumbing appliances and fixtures	800
E. Maintenance and repair of plumbing	600
F. Gas piping or service piping	400
G. Service and maintenance of gas controls and equipment	100

H.	Welding, soldering and brazing as it applies to the trade	100
I.	Hydronics piping and equipment installation	300
J.	Fire suppression system installation	100

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber, which shall include successful completion of an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or by another similar out of state body that approves formal plumbing educational programs; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

R156-55c-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are as follows:

(1) The applicant shall obtain a minimum score of 70% on the Utah Plumbers Licensing Examination that shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in this section and in Sections R156-55c-302a and R156-55c-302b; or

(b) the applicant has completed:

(i) the first semester of the fourth year of the apprentice education program set forth in Subsection R156-55c-302a(1)(a)(ii); and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55c-302a(1)(a)(i).

(3) (a) If an applicant fails any section of the examination, the applicant shall retake that section.

(b) An applicant shall wait at least 25 days for the first two retakes, and thereafter shall wait 120 days between retakes.

(4) If an applicant passes any section of the examination but does not pass the entire examination, the passing score for that section shall be valid for one year from the pass date. After one year the applicant shall retake any previously passed section to support any subsequent application for licensure.

R156-55c-302c. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

(a) supervising employees: 700 hours;

(b) supervising construction projects: 700 hours;

(c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the immediate supervision of the applicant's employer; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302d(1).

(a) The degree shall be accredited by one of the following:

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on Colleges and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

(i) accounting;

(ii) apprenticeship;

(iii) business management;

(iv) communications;

(v) computer systems and computer information systems;

(vi) construction management;

(vii) engineering;

(viii) environmental technology;

(ix) finance;

(x) human resources; or

(xi) marketing.

R156-55c-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 55, is established by rule in Section R156-1-308a(1).

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

R156-55c-304. Continuing Education - Standards.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 12 hours of continuing education during each two-year license term. A minimum of eight hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering:

(a) International Building, Mechanical, Plumbing, and International Energy Conservation Codes and Utah building code amendments as adopted or proposed for adoption;

(b) the Americans with Disability Act;

(c) medical gas, National Fire Protection Association 13D and 54; and

(d) hydronics and waste water treatment.

(3) "Professional continuing education" is defined as education covering:

(a) energy conservation, management training, new technology, plan reading; and

(b) lien laws and Utah construction registry

(c) Occupational Safety and Health Administration (OSHA) training; and

(d) government regulations.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement, and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved education apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions, or distance learning modules. The remaining ten minutes may be used for breaks.

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

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the plumbing trade.

(c) Content. The content of the course shall be relevant to the practice of the plumbing trade and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.

(g) Distance learning. A course that is provided through internet or home study courses may be recognized for continuing education if the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division, and shall provide to individuals completing the course a certificate that contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts, and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (10). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(10) A course provider shall submit to the continuing education registry, in the format required by the continuing education registry:

(a) applications for approval of continuing education courses; and

(b) on behalf of each licensee, verification of the licensee's attendance and completion of a continuing education course.

(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses that meet the standards set forth under this section.

(12) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications for course approval from continuing education course providers, and submit to the Division for review and approval only those courses which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education courses approved by the Division, which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of approved qualified continuing education courses;

(iv) maintain accurate records of verification of attendance and completion for each individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55c-305. Licensure by Endorsement.

The Division may issue a license by endorsement in

accordance with the provisions of Section 58-1-302.

R156-55c-401. Conduct of Apprentice and Supervising Plumber.

(1) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with Subsections 58-55-302(3)(e), 58-55-501, 58-55-502 and R156-55c-501.

(2) For the purposes of Subsections 58-55-302(3)(e) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same plumbing contractor; or

(b) the plumbing contractor may contract with a licensed professional employer organization to employ such persons.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to comply with the supervision requirements established by Subsection 58-55-302(3)(e);

(2) failing as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the Division or any law enforcement officer;

(3) failing as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

R156-55c-502. Administrative Penalties.

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

KEY: occupational licensing, licensing, plumbers, plumbing
December 22, 2016 58-1-106(1)(a)
Notice of Continuation August 8, 2016 58-1-202(1)(a)
58-55-101

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.
R156-67-101. Title.

This rule shall be known as the "Utah Medical Practice Act Rule".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or this rule:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(5) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(6) "FSMB" means the Federation of State Medical Boards.

(7) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(8) "LMCC" means the Licentiate of the Medical Council of Canada.

(9) "NBME" means the National Board of Medical Examiners.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-67-502.

(11) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. 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 67.

R156-67-104. 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.

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall submit the Federation Credentials Verification Service (FCVS) form.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(i) Candidates who fail any combination of the USMLE, FLEX and NBME three times must provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

R156-67-303. 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 67 is established by rule in Section R156-1-308a.

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

R156-67-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(3) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health; and

(4) in accordance with Section 58-67-305, a medical assistant, while working under the indirect supervision of a licensed physician and surgeon, may not additionally engage in:

(a) diagnosing; or

(b) establishing a treatment plan.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603;

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference; and

(16) failing to timely submit an annual written report to the division indicating that the physician has reviewed at least annually the dispensing practices of those authorized by the physician to dispense an opiate antagonist pursuant to Section R156-67-604.

R156-67-503. Administrative Penalties.

(1) In accordance with Subsection 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by

diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-67-502(9):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):

First Offense: $100-$500

Second Offense: $500-$3,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):

First Offense: $100-$5,000

Second Offense: $500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: $500-$5,000

Second Offense: $1,500-10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ii) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-501(1):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(jj) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(kk) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-501(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ll) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(mm) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: $5000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the

second offense

(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(vv) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the "AMA Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

R156-67-604. Required Reporting of Annual Review of Physician of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.

(1) In accordance with Subsection 26-55-105(2)(c), a physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has reviewed at least annually the dispensing practices of those authorized by the physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) A physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

KEY: physicians, licensing

December 8, 2016	**58-67-101**
Notice of Continuation February 8, 2016	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-101. Title.

This rule shall be known as the "Utah Osteopathic Medical Practice Act Rule."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or this rule:

(1) "AAPS" means American Association of Physician Specialists.

(2) "ABMS" means American Board of Medical Specialties.

(3) "ACCME" means Accreditation Council for Continuing Medical Education.

(4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(5) "AMA" means the American Medical Association.

(6) "AOA" means American Osteopathic Association.

(7) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(8) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(9) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(10) "FSMB" means the Federation of State Medical Boards.

(11) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(12) "LMCC" means the Licentiate of the Medical Council of Canada.

(13) "NBME" means the National Board of Medical Examiners.

(14) "NBOME" means the National Board of Osteopathic Medical Examiners.

(15) "NPDB" means the National Practitioner Data Bank.

(16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.

(17) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. 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 68.

R156-68-104. 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.

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

(1) American Osteopathic Association Profile or American Medical Association Profile;

(2) Federation of State Medical Boards Disciplinary Inquiry form; and

(3) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III;

(b) the NBOME parts I, II and the NBOME COMPLEX Level III;

(c) the NBOME part I and the NBOME COMLEX Level II and III;

(d) the NBOME COMLEX Level I, II and III;

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(h) the LMCC examination, Parts 1 and 2;

(i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(l) A candidate who fails any combination of the USMLE, FLEX, NBME and NBOME three times shall provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

(4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

R156-68-303. 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 68, is established by rule in Section R156-1-308a.

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

R156-68-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-68-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an AOA or ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(3) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits; and

(4) In accordance with Section 58-68-305, a medical assistant, while working under the indirect supervision of a licensed osteopathic physician and surgeon, may not additionally engage in:

(a) diagnosing; or

(b) establishing a treatment plan.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate

pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603;

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference; and

(15) failing to timely submit an annual written report to the division indicating that the osteopathic physician has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense an opiate antagonist, pursuant to Section R156-68-604.

R156-68-503. Administrative Penalties.

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by

the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: $100-$500

Second Offense: $500-$3,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: $100-$5,000

Second Offense: $500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: $500-$5,000

Second Offense: $1,500-10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ii) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-501(1):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(jj) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(kk) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-501(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ll) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(mm) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):
First Offense: $5000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(vv) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-68-602. Medical Records.

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the AMA "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

R156-68-604. Required Reporting of Annual Review by Osteopathic Physicians of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.

(1) In accordance with Subsection 26-55-105(2)(c), an osteopathic physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) An osteopathic physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the

opiate antagonist specified in Subsection R156-17b-625(1).

KEY: osteopaths, licensing, osteopathic physician
December 8, 2016 58-1-106(1)(a)
Notice of Continuation February 7, 2013 58-1-202(1)(a)
58-68-101

R156. Commerce, Occupational and Professional Licensing.
R156-70a. Physician Assistant Practice Act Rule.
R156-70a-101. Title.

This rule is known as the "Physician Assistant Practice Act Rule".

R156-70a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 70a, as used in this rule:

(1) "Full time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period.

(2) "Locum tenens" means a medical practice situation in which one physician assistant acts as a temporary substitute for the physician assistant who regularly will or does practice in that particular setting.

(3) "On-site supervision", as used in Section R156-70a-501, means the physician assistant will be working in the same location as the supervising physician.

R156-70a-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 70a.

R156-70a-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.

R156-70a-302. Qualification for Licensure - Examination Requirements.

In accordance with Subsection 58-70a-302(5), the examination requirement for licensure as a physician assistant is a passing score on the National Commission on Certification of Physician Assistants (NCCPA) examination.

R156-70a-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 70a is established by rule in Section R156-1-308a.

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

R156-70a-304. Continuing Education.

In accordance with Subsection 58-70a-304(1)(a), the requirements for qualified continuing professional education (CPE) are as follows:

(1) CPE shall consist of 40 hours during each two-year licensure cycle. A licensee's documentation to the Division of current national certification by NCCPA shall be deemed to meet the requirements in this section.

(2) Licensees may fulfill up to 15% of their CPE requirement by providing volunteer services within the scope of their license at a qualified location, in accordance with Section 58-13-3. For every four documented hours of volunteer services, the licensee may earn one hour of CPE credit.

(3) A minimum of 34 hours shall be in category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME).

(4) Approved providers for ACCME offerings include the following:

(a) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or

(b) programs approved by other health-related continuing education approval organizations, provided the continuing education is nationally recognized by a healthcare accredited agency and the education is related to the practice as a physician assistant.

(5) A maximum of six CPE hours may be recognized for non-ACCME offerings of continuing education provided by the Division of Occupational and Professional Licensing.

(6) CPE under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion.

(7) CPE credit shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (6) above).

(8) A licensee shall maintain competent records of completed continuing professional education for a period of four years after close of the two-year licensure period. It is the responsibility of the licensee to demonstrate that their continuing education meets the requirements of this section.

(9) Continuing professional education for licensees who have not been licensed for the entire two-year period shall be prorated from the date of licensure.

R156-70a-305. Exemptions from Licensure.

"Temporary basis", as used in Subsection 58-70a-305(1)(b)(ii), shall be limited as defined by the Delegation of Service Agreement and shall include the following:

(1) the circumstances and purpose under which any temporary supervision is permitted;

(2) the temporary supervision duties to be performed by the physician assistant;

(3) the amount of temporary supervision that is allowed; and

(4) how the physician will review the activities of students while under temporary supervision.

R156-70a-501. Working Relationship and Delegation of Duties.

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

(3) The supervising physician shall review and co-sign sufficient numbers of patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for review that are appropriate for the working relationship.

(4) A supervising physician may not supervise more than four full time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with the board, and only for extenuating circumstances with a written request with justification. The supervising physician shall ensure that patient health, safety, and welfare is not adversely compromised by supervising more physician assistants than the physician can competently supervise.

KEY: licensing, physician assistants
December 22, 2016 58-70a-101

Notice of Continuation November 3, 2016 **58-1-106(1)(a)**
58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-2f. Real Estate Licensing and Practices Rules.
R162-2f-101. Title and Authority.

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs; or

(k) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Closing gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in appreciation for having used the services of a real estate brokerage.

(11) "Commission" means the Utah Real Estate Commission.

(12) "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).

(13) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and

(b) fails to meet real estate educational course certification standards because:

(i) it is primarily student initiated; and

(ii) the interaction between the instructor and student lacks substance and/or is irregular.

(14) "Day" means calendar day unless specified as "business day."

(15)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

(i) computer conferencing;

(ii) satellite teleconferencing;

(iii) interactive audio;

(iv) interactive computer software;

(v) Internet-based instruction; and

(vi) other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

(16) "Division" means the Utah Division of Real Estate.

(17) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(18) "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.

(19) "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.

(20) "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.

(21) "Inducement gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in a real estate transaction as an incentive to use the services of a real estate brokerage.

(22) "Informed consent" means written authorization,

obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(23) "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.

(24) "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.

(25)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

(i) home study courses; or

(ii) correspondence courses.

(26) "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.

(27) "Principal brokerage" means the main real estate or property management office of a principal broker.

(28) "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.

(29) "Provider" means an individual or business that is approved by the division to offer continuing education.

(30) "Property management" is defined in Subsection 61-2f-102(19).

(31) "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.

(32) "Reinstatement" is defined in Subsection 61-2f-102(22).

(33) "Reissuance" is defined in Subsection 61-2f-102(23).

(34) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.

(35) "Renewal" is defined in Subsection 61-2f-102(24).

(36) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(37) "School" means:

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college or vocational-technical school;

(c) any local real estate organization that has been approved by the division as a school; or

(d) any proprietary real estate school.

(38) "Sponsor" means:

(a) a person who is the original seller of an undivided fractionalized long-term estate.

(b) sponsor includes, if the seller is an entity, any individual who exercises managerial responsibility in the sponsoring entity.

(39) "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.

(40) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(41) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-105. Fees.

Any fee collected by the division is nonrefundable.

R162-2f-201. Qualification for Licensure.

(1) Character. Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant shall be denied a license for:

(i) a felony that resulted in:

(A) a conviction occurring within the five years preceding the date of application;

(B) a plea agreement occurring within the five years preceding the date of application; or

(C) a jail or prison term with a release date falling within the five years preceding the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within the three years preceding the date of application; or

(B) a jail or prison term with a release date falling within the three years preceding the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

(i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);

(ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

(iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(iv) court findings of fraudulent or deceitful activity;

(v) evidence of non-compliance with court orders or conditions of sentencing; and

(vi) evidence of non-compliance with:

(A) terms of a diversion agreement not yet closed and

dismissed;
(B) a probation agreement; or
(C) a plea in abeyance.
(c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.
(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include, but are not limited to, the following:
(A) assault, including domestic violence;
(B) rape;
(C) sex abuse of a child;
(D) sodomy on a child;
(E) battery;
(F) interruption of a communication device;
(G) vandalism;
(H) robbery;
(I) criminal trespass;
(J) breaking and entering;
(K) kidnapping;
(L) sexual solicitation or enticement;
(M) manslaughter; and
(N) homicide.
(iii) Information and documents submitted in compliance with this Subsection (1)(c) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.
(2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:
(a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
(c) suspension or revocation of a professional license;
(d) sanctions placed on a professional license; and
(e) investigations conducted by regulatory agencies relative to a professional license.
(3) Age. An applicant shall be at least 18 years of age.
(4) Minimum education. An applicant shall have:
(a) a high school diploma;
(b) a GED; or
(c) equivalent education as approved by the commission.

R162-2f-202a. Sales Agent Licensing Fees and Procedures.
(1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:
(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
(c)(i) successfully complete 120 hours of approved prelicensing education;
(ii) evidence current membership in the Utah State Bar; or
(iii) apply to the division for waiver of all or part of the education requirement by virtue of:
(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
(B) completing other equivalent real estate education within the 12-month period prior to the date of application;
(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
(ii) pay a nonrefundable examination fee to the testing center;
(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
(f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
(i) documentation indicating successful completion of the required prelicensing education;
(ii) a report of the examination showing a passing score for each component of the examination; and
(iii) the applicant's business, home, and e-mail addresses;
(g) if applying for an active license, affiliate with a principal broker; and
(h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
(2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:
(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
(c)(i) successfully complete 120 hours of approved prelicensing education;
(ii) evidence current membership in the Utah State Bar; or
(iii) apply to the division for waiver of all or part of the education requirement by virtue of:
(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;
(B) completing other equivalent real estate education within the 12-month period prior to the date of application; or
(C) having been licensed in a state that has substantially equivalent prelicensing education requirements;
(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
(ii) pay a nonrefundable examination fee to the testing center;
(e)(i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination; or
(ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:
(A) take and pass the state component of the licensing examination; and
(B) apply to the division for a waiver of the national component of the licensing examination;
(f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
(i) documentation indicating successful completion of the required prelicensing education;
(ii) a report of the examination showing a passing score for each component of the examination; and
(iii) the applicant's business, home, and e-mail addresses;
(g) provide from any state where licensed:
(i) a written record of the applicant's license history; and
(ii) complete documentation of any disciplinary action taken against the applicant's license;
(h) if applying for an active license, affiliate with a principal broker; and
(i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
(3) Deadlines.
(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202b. Principal Broker Licensing Fees and Procedures.

(1) To obtain a Utah license to practice as a principal broker, an individual shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved prelicensing education, including:

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period prior to the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application either:

(A) three years full-time, licensed, active real estate experience; or

(B) two years full-time, licensed, active, real estate experience and one year full-time professional real estate experience from the optional experience table in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 documented experience points complying with R162-2f-401a, as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2, of which a maximum of 25 points may have been accumulated from the "All other property management" subsections of Appendix 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3; and

(iii) a minimum of one-half of the experience points from Tables 1 and 2 must derive from transactions of properties located in the state of Utah;

(iv) if an individual submits evidence of experience points for transactions involving a team or group, experience points are limited to those transactions for which the individual is named in any written agency agreements and purchase and/or lease contracts and the applicable experience points will be divided proportionally among the licensees identified in the agency agreements and and/or lease contracts;

(g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

(k) establish real estate and property management trust accounts, as applicable pursuant to Section R162-2f-403, that:

(i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and

(ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and

(l) identify the location(s) where brokerage records will be kept.

(2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(5) Dual broker licenses.

(a)(i) A person who holds or obtains a dual broker license under this Subsection may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c;

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:

(i) at the broker's request, convert the dual broker license to a principal broker license; and

(ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

(c) As of May 8, 2013:

(i) the Division shall:

(A) cease issuing property management principal broker (PMPB) licenses;

(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;

(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and

(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and

(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to this Subsection (5)(c)(i)(C).

R162-2f-202c. Associate Broker Licensing Fees and Procedures.

To obtain a Utah license to practice as an associate broker, an individual shall:

(1) comply with Subsections R162-2f-202b(1)(a) through (j); and

(2) if applying for an active license, affiliate with a principal broker.

R162-2f-203. Inactivation and Activation.

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) prior to inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) prior to the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or

(C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non-refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

R162-2f-204. License Renewal.

(1) Renewal period and deadlines.

(a) A license issued under these rules is valid for a period of two years from the date of licensure.

(b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).

(c) In order to renew on time without incurring a late fee:

(i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and

(ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:

(A) by the license expiration date, if that date falls on a day when the division is open for business; or

(B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal.

(a) Character and competency.

(i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was

explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an individual shall complete:

(A) the 12-hour new sales agent course certified by the division; and

(B) an additional six non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum; and

(III) taken during the previous license period; or

(B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, prior to the expiration of the license:

(i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and

(ii) pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) - (d):

(i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and

(ii) pay a nonrefundable reinstatement fee.

(4) Transition to online renewal. An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration of Entity.

(1) A principal broker may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;

(e) inform the division of:

(i) the location and account number of any operating account(s) used by the registered entity; and

(ii) the location where brokerage records will be kept; and

(f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) All trust accounts and operating accounts used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-206a. Certification of Real Estate School.

(1) Prior to offering real estate prelicensing or continuing

education, a school shall:

(a) first, obtain division approval of the school name; and

(b) second, certify the school with the division pursuant to this Subsection (2).

(2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:

(a) contact information, including:

(i) name, phone number, email address, and address of the physical facility;

(ii) name, phone number, email address, and address of each school director;

(iii) name, phone number, email address, and address of each school owner; and

(iv) an e-mail address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name, as approved by the division pursuant to this Subsection (1)(a), is registered with the Division of Corporations and Commercial Code as a real estate education provider;

(d) school description, including:

(i) type of school; and

(ii) description of the school's physical facilities;

(e) list of courses to be offered, including the following:

(i) a statement of whether each course is a prelicensing or continuing education course; and

(ii) as to a continuing education course, whether it is designed to qualify as fulfilling all or part of the core curriculum requirement for new agents;

(f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(g) proof that each instructor is:

(i) certified by the division;

(ii) qualified as a guest lecturer by having:

(A) requisite expertise in the field; and

(B) approval from the division; or

(iii) exempt from certification under Subsection R162-2f-206d(4);

(h) schedule of courses offered, including the days, times, and locations of classes;

(i) statement of attendance requirements as provided to students;

(j) refund policy as provided to students;

(k) disclaimer as provided to students and as specified in Subsection (3)(c);

(l) criminal history disclosure statement as provided to students and as specified in Subsection (3)(d);

(m) disclosure, as specified in Subsection (3)(e), of any possibility of obtaining an education waiver;

(n) course completion policy, as provided to students, describing the length of time allowed for completion and detailed requirements; and

(o) any other information the division requires.

(3) Minimum standards.

(a) The course schedule may not provide or allow for more than eight credit hours per student per day.

(b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.

(c) The disclaimer shall adhere to the following requirements:

(i) be typed in all capital letters at least 1/4 inch high; and

(ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."

(d) The criminal history disclosure statement shall:

(i) be provided to each student prior to the school accepting payment; and

(ii) clearly inform the student that upon application with the division, the student will be required to:

(A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;

(B) submit fingerprint cards to the division and consent to a criminal background check; and

(C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and

(iv) include a section for the student's attestation that the student has read and understood the disclosure.

(e) The education waiver disclosure shall adhere to the following requirements:

(i) disclose to students the requirements for obtaining an education waiver while they are still eligible for a full refund;

(ii) be typed in all capital letters at least 1/4 inch high;

(iii) inform the students that the division grants education waivers for qualified individuals; and

(iv) state the following language: "A student accepted or enrolled for education hours cannot later reduce those hours by applying for an education waiver. An education waiver must be obtained before a student enrolls and is accepted by a school for education hours."

(f) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide, to the division's education staff, written notice of the change.

(4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a school certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206b. Certification Prelicensing Course.

(1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) comprehensive course outline including:

(i) description of the course, including a statement of whether the course is designed for:

(A) sales agents; or

(B) brokers;

(ii) number of class periods spent on each subject area;

(iii) minimum of three to five learning objectives for every three hours of class time; and

(iv) reference to the course outline approved by the commission for each topic;

(b) number of quizzes and examinations;

(c) grading system, including methods of testing and standards of grading;

(d)(i) a copy of at least two final examinations to be used in the course;

(ii) the answer key(s) used to determine if a student has passed the exam; and

(iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and

(e) a list of the titles, authors and publishers of all required textbooks.

(2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) all items listed in this Subsection (1);

(b) description of each method of course delivery;

(c) description of any media to be used;

(d) course access for the division using the same delivery methods and media that will be provided to the students;

(e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

(f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;

(g) description of how and when certified prelicensing instructors will be available to answer student questions;

(h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims; and

(i) a description of the complaint process to resolve student grievances.

(3) Minimum standards. A prelicensing course shall:

(a) address each topic required by the course outline as approved by the commission;

(b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and these rules;

(c) limit the credit that students may earn to no more than eight credit hours per day;

(d) be taught in an appropriate classroom facility unless approved for distance education;

(e) allow a maximum of 10% of the required class time for testing, including:

(i) practice tests; and

(ii) a final examination;

(f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline; and

(g) reflect the current statutes and rules of the division.

(4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

R162-2f-206c. Certification of Continuing Education Course.

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.

(b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) name and contact information of the course provider;

(b) name and contact information of the entity through which the course will be provided;

(c) description of the physical facility where the course will be taught;

(d) course title;

(e) number of credit hours;

(f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:

(i) knowledge;

(ii) professionalism; and

(iii) ability to protect and serve the public;

(g) course outline including a description of the subject matter covered in each 15-minute segment;

(h) a minimum of three learning objectives for every three hours of class time;

(i) name and certification number of each certified instructor who will teach the course;

(j) copies of all materials to be distributed to participants;

(k) signed statement in which the course provider and instructor(s):

(i) agree not to market personal sales products;

(ii) allow the division or its representative to audit the course on an unannounced basis; and

(iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:

(A) course name;

(B) course certificate number assigned by the division;

(C) date(s) the course was taught;

(D) number of credit hours; and

(E) names and license numbers of all students receiving continuing education credit;

(l) procedure for pre-registration;

(m) tuition or registration fee;

(n) cancellation and refund policy;

(o) procedure for taking and maintaining control of attendance during class time;

(p) sample of the completion certificate;

(q) nonrefundable fee for certification as required by the division; and

(r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

(a) comply with this Subsection (2);

(b) submit to the division a complete description of all course delivery methods and all media to be used;

(c) provide course access for the division using the same delivery methods and media that will be provided to the students;

(d) describe specific frequent and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;

(e) describe how and when certified instructors will be available to answer student questions; and

(f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) Minimum standards.

(a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a

private residence.

(b) The minimum length of a course shall be one credit hour.

(c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.

(d) The completion certificate shall allow for entry of the following information:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) number of credit hours awarded;

(viii) course certification number;

(ix) course certification expiration date;

(x) signature of the course sponsor; and

(xi) signature of the licensee.

(5) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

(i) state approved forms and contracts;

(ii) other industry used forms or contracts;

(iii) ethics;

(iv) agency;

(v) short sales or sales of bank-owned property;

(vi) environmental hazards;

(vii) property management;

(viii) prevention of real estate and mortgage fraud;

(ix) federal and state real estate laws;

(x) fair housing;

(xi) division administrative rules;

(xii) broker trust accounts; and

(xiii) water law, rights and transfer.

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

(i) obtain authorization to use the form(s) or contract(s) taught in the course;

(ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and

(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

(i) real estate financing, including mortgages and other financing techniques;

(ii) real estate investments;

(iii) real estate market measures and evaluation;

(iv) real estate appraising;

(v) market analysis;

(vi) measurement of homes or buildings;

(vii) accounting and taxation as applied to real property;

(viii) estate building and portfolio management for clients;

(ix) settlement statements;

(x) real estate mathematics;

(xi) real estate law;

(xii) contract law;

(xiii) agency and subagency;

(xiv) real estate securities and syndications;

(xv) regulation and management of timeshares, condominiums, and cooperatives;

(xvi) resort and recreational properties;

(xvii) farm and ranch properties;

(xviii) real property exchanging;

(xix) legislative issues that influence real estate practice;

(xx) real estate license law;

(xxi) division administrative rules;

(xxii) land development;

(xxiii) land use;

(xxiv) planning and zoning;

(xxv) construction;

(xxvi) energy conservation in buildings;

(xxvii) water rights;

(xxviii) landlord/tenant relationships;

(xxix) property disclosure forms;

(xxx) Americans with Disabilities Act;

(xxxi) affirmative marketing;

(xxxii) commercial real estate;

(xxxiii) tenancy in common;

(xxxiv) professional development;

(xxxv) business success;

(xxxvi) customer relation skills;

(xxxvii) 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;

(xxxviii) personal and property protection for licensees and their clients;

(xxxix) 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;

(xl) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and

(xli) technology courses that utilize the majority of the time instructing students how the technology:

(A) directly benefits the consumer; or

(B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.

(f) Unacceptable topics include the following:

(i) offerings in mechanical office and business skills, including:

(A) typing;

(B) speed reading;

(C) memory improvement;

(D) language report writing;

(E) advertising; and

(F) technology courses with a principal focus on technology operation, software design, or software use;

(ii) physical well-being, including:

(A) personal motivation;

(B) stress management; and

(C) dress-for-success;

(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:

(A) sales meetings;

(B) in-house staff meetings or training meetings; and

(C) member orientations for professional organizations;

(iv) courses in wealth creation or retirement planning for licensees; and

(v) courses that are specifically designed for exam preparation.

(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.

(6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed

before the expiration date in order to remain active.

(b) To renew a continuing education course certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206d. Certification of Prelicensing Course Instructor.

(1) An instructor shall certify with the division prior to teaching a prelicensing course.

(2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:

(a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(b) evidence of having graduated from high school or achieved an equivalent education;

(c) evidence that the applicant understands the real estate industry through:

(i) a minimum of five years of full-time experience as a real estate licensee;

(ii) post-graduate education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(d) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at a division instructor development workshop totaling at least two days in length;

(e) evidence of having passed an examination:

(i) designed to test the knowledge of the subject matter proposed to be taught;

(ii) with a score of 80% or more correct responses, and;

(iii) within the six-month period preceding the date of application;

(f) name and certification number of the certified prelicensing school for which the applicant will work;

(g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(h) a signed statement agreeing not to market personal sales products;

(i) any other information the division requires;

(j) an application fee; and

(k) course-specific requirements as follows:

(i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and

(ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.

(3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:

(a) Brokerage Management. An applicant shall:

(i) hold a current real estate broker license;

(ii) possess at least two years practical experience as an active real estate principal broker; and

(iii)(A) have experience managing a real estate office; or

(B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.

(b) Advanced Real Estate Law. An applicant shall:

(i) hold a current real estate broker license;

(ii) evidence current membership in the Utah State Bar; or

(iii)(A) have graduated from an American Bar Association accredited law school; and

(B) have at least two years real estate law experience.

(c) Advanced Appraisal. An applicant shall hold:

(i) a current real estate broker license, or

(ii) a current appraiser license or certification from the division.

(d) Advanced Finance. An applicant shall:

(i) evidence at least two years practical experience in real estate finance; and

(ii)(A) hold a current real estate broker license;

(B) evidence having been associated with a lending institution as a loan officer; or

(C) hold a degree in finance.

(e) Advanced Property Management. An applicant shall hold a current real estate license and:

(i) evidence at least two years full-time experience as a property manager; or

(ii) hold a certified property manager or equivalent professional designation.

(4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.

(5)(a) A prelicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a prelicensing course instructor certification, an individual shall:

(i) submit all forms required by the division;

(ii) evidence having taught, within the two-year period prior to the date of application, a certified real estate course;

(iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and

(iv) pay a nonrefundable renewal fee.

(c) To reinstate an expired prelicensing course instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206e. Certification of Continuing Education Course Instructor.

(1) An instructor shall certify with the division before teaching a continuing education course.

(2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:

(a) name and contact information of the applicant;

(b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(c) evidence of having graduated from high school or achieved an equivalent education;

(d) evidence that the applicant understands the subject matter to be taught through:

(i) a minimum of two years of full-time experience as a real estate licensee;

(ii) college-level education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(e) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience; or

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience;

(f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(g) a signed statement agreeing not to market personal sales products;

(h) any other information the division requires; and

(i) a nonrefundable application fee.

(3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course instructor certification, a person shall:

(i) submit all forms required by the division;

(ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or

(B) submit written explanation outlining:

(I) the reason for not having taught a minimum of 12 continuing education credit hours; and

(II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and

(iii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-207. Reporting a Change of Information.

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) change in licensee's name; and

(ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with this Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

(a) change in entity's name;

(b) change in entity's affiliation with a principal broker;

(c) change in corporate structure;

(d) dissolution of corporation; and

(e) change of location where brokerage records are kept.

(3) Notification procedures.

(a) Name. To report a change in name, a person shall submit to the division a paper change form and:

(i) if the person is an individual, attach to it official documentation such as a:

(A) marriage certificate;

(B) divorce decree;

(C) court order; or

(D) driver license; and

(ii) if the person is an entity:

(A) obtain prior approval from the division of the new entity name; and

(B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.

(b) Address. To report a change in address, a person shall enter the change into RELMS.

(c) Affiliation.

(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with this Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a paper company/branch change form to inactivate the entity registration;

(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;

(IV) advise the division as to the location where records will be stored;

(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;

(VI) notify each party and cooperating broker to any existing contracts; and

(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.

(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

(ii) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).

(e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and

(b) as applicable:

(i) entering the certified mail reference number into the appropriate field on the electronic change form; or

(ii) providing to the division a copy of the certified mail receipt.

(5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(6) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-307. Undivided Fractionalized Long-Term Estate.

A person who sells or offers to sell an undivided fractionalized long-term estate shall disclose to each prospective purchaser certain information related to the real property in which the undivided fractionalized long-term estate is offered, as described in this rule. A real estate licensee who markets an undivided fractionalized long-term estate shall obtain from the sponsor or seller and provide to each prospective purchaser the required information related to the real property in which the undivided fractionalized long-term estate is offered. The information required to be disclosed hereunder shall be in written or documented form, which shall be provided to the purchaser prior to purchasing, and shall include the following:

(1) for all undivided fractionalized long-term estates:

(a) a brief account describing the professional qualifications, background, and experience of the sponsor;

(b) any material information that relates to a current lease or sublease that affects the real property in which the undivided fractionalized long-term estate is offered;

(c) the tenant in common agreement or other agreement that forms the substance of the undivided fractionalized long-term estate and includes a definition of the undivided fractionalized interest;

(d) description of any improvements to the real property in which the undivided fractionalized long-term estate is offered;

(e) any defects in the property known by the sponsor that may materially affect the value of the property;

(f) material information known by the sponsor concerning any environmental issues affecting the real property; and,

(g) a preliminary title report on the real property;

(2) in addition to the disclosures required by subsection (1), if the undivided fractionalized long-term estate includes:

(a) management of the real property by the sponsor or an affiliate of the sponsor in accordance with UCA Section 61-1-13(1)(ee)(ii)(C)(II) and (III), the information required to be disclosed shall include:

(i) the sponsor's continuing interest, if any, in the real property;

(ii) any bankruptcies or civil lawsuits involving the sponsor and each affiliate of the sponsor;

(iii) whether any affiliate of the sponsor is or is expected to become a third-party service provider to the real property;

(iv) any relationship between the property managers and the sponsor; and,

(v) any property management agreements that would continue after the sale;

(b) multiple tenants, the information required to be disclosed shall include:

(i) any rent rolls and payment history for the property which the sponsor has in their possession, custody, or control; and

(ii) any tenant financial records the sponsor has in their possession, custody, or control;

(c) debt on the real property, the information required to be disclosed shall include:

(i) each of the loan documents; and

(ii) a current loan statement;

(d) a master lease agreement, the information required to be disclosed shall include:

(i) the master lease agreement;

(ii) disclosure of the sponsor's relationship with the master tenant, if any;

(iii) if the master lease tenant is an affiliate of the sponsor, or the sponsor participated in establishing the master lease:

(A) audited financial statements of the master lease tenant; and

(B) all bankruptcies or civil lawsuits involving the sponsor, an affiliate of the sponsor, or the master lease tenant.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful

instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for all money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;

(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

(a) seller(s) the individual represents;

(b) buyer(s) the individual represents;

(c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:

(a) clearly explaining in writing to both parties:

(i) that each is entitled to be represented by a separate agent;

(ii) the type(s) of information that will be held confidential;

(iii) the type(s) of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

(i) undivided loyalty;

(ii) absolute confidentiality; and

(iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

(a) act as a neutral third party; and

(b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe all money or property entrusted to the limited agent; and

(iv) any additional duties created by the agency agreement;

(5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

(c) the licensee's agency relationship(s);

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

(6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;

(7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:

(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and

(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;

(8) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(10) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(11) 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);

(12) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(13)(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;

(14) 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;

(15)(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;

(16)(a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;

(17) use an approved addendum form to make a

counteroffer or any other modification to a contract;

(18) in order to sign or initial a document on behalf of a principal in a sales transaction:

(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);"

(19) in order to sign or initial a document on behalf of a principal in a property management transaction:

(a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;

(b) retain in the file for the transaction a copy of the written authorization;

(c) sign as follows: "by (Licensee's Name), on behalf of Owner;" and

(d) initial as follows: "by (Licensee's inititials), on behalf of Owner;"

(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(19), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare; or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division:

(a) in an application for license renewal; or

(b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(a) a licensee may give a gift valued at $150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(b) as to a property management transaction, a licensee may compensate an unlicensed employee or current tenant up to $200 per lease for assistance in retaining an existing tenant or securing a new tenant;

(13) accept a referral fee from:

(a) a lender; or

(b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(23);

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(22) in a short sale, have the seller sign a document allowing the licensee to lien the property; or

(23) charge any fee that represents the difference between:
(a) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or
(b) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

R162-2f-401c. Additional Provisions Applicable to Principal Brokers.

(1) A principal broker shall:
(a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;
(b) provide to the person whom the principal broker represents in a real estate transaction:
(i) a detailed statement showing the current status of a transaction upon the earlier of:
(A) the expiration of 30 days after an offer has been made and accepted; or
(B) a buyer or seller making a demand for such statement; and
(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;
(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:
(A) the principal broker;
(B) an associate broker or branch broker affiliated with the principal broker; or
(C) the sales agent who is:
(I) affiliated with the principal broker; and
(II) representing the principal in the transaction; and
(ii) ensure the principals in each closed real estate transaction receive copies of all documents executed in the transaction closing;
(d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:
(i) an identification of the property involved in the real estate transaction;
(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;
(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;
(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and
(v) additional instructions at the discretion of the principal broker;
(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;
(f) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:
(i) the principal broker for an entity; or
(ii) a branch broker;
(g) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;
(h) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;
(i)(i) except as provided in this Subsection (1)(i)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:
(A) maintained by the principal broker pursuant to Section R162-2f-403; or
(B) if the parties to the transaction agree in writing, maintained by:
(I) a title company pursuant to Section 31A-23a-406; or
(II) another authorized escrow entity; and
(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;
(iii) a principal broker is not required to comply with this Subsection (1)(i)(i) or (ii) if:
(A) the contract or other written agreement states that the money is to be:
(I) held for a specific length of time; or
(II) as to a real estate transaction, deposited upon acceptance by the seller; or
(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:
(I) names the seller as payee; and
(II) is retained in the principal broker's file until closing;
(j)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate and property management transactions; and
(ii) be personally responsible at all times for deposits held in the principal broker's trust account;
(k)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and
(II) assign a unique identification to each property management client; and
(B) include the transaction number or client identification, as applicable, on:
(I) trust account deposit records; and
(II) trust account checks or other equivalent records evidencing the transfer of trust funds;
(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;
(iii) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:
(A) in separate files; or
(B) in a single file holding all such offers; and
(l) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):
(i) actively supervise any such associate broker or branch broker; and
(ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.

(2) A principal broker shall not be deemed in violation of this Subsection (1)(f) where:
(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;
(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;
(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;
(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;
(e) the broker did not participate in the violation;
(f) the broker did not ratify the violation; and
(g) the broker did not attempt to avoid learning of the

violation.

R162-2f-401d. School and Provider Conduct.

(1) Affirmative duties. A school's owner(s) and director(s) shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of prelicensing courses with the state-approved course outline; and

(ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that all instructors comply with Section R162-2f-401e.

(d) prior to accepting payment from a prospective student for a prelicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d);

(ii) obtain the student's signature on the criminal history disclosure; and

(iii) have the enrollee verify that an education waiver has not been obtained from the division;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

(j) within ten days of teaching a course, upload course completion information for any student who:

(i) successfully completes the course; and

(ii) provides an accurate name or license number within seven business days of attending the course;

(k) substantiate, upon request by the division, any claims made in advertising; and

(l) include in all advertising materials the continuing education course certification number issued by the division.

(2) Prohibited conduct. A school may not:

(a) award continuing education credit for a course that has not been certified by the division prior to its being taught;

(b) award continuing education credit to any student who fails to:

(i) attend a minimum of 90% of the required class time; or

(ii) pass a prelicense course final examination;

(c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;

(d) allow a student to challenge by examination any course or part of a course in lieu of attendance;

(e) allow a course approved for traditional education to be:

(i) taught in a private residence; or

(ii) completed through home study;

(f) make a misrepresentation in advertising about any course of instruction;

(g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;

(h) make disparaging remarks about a competitor's services or methods of operation;

(i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

(j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;

(k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;

(l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;

(m) obligate or require students to attend any event in which a brokerage solicits for agents;

(n) award more than eight credit hours per day per student;

(o) award credit for an online course to a student who fails to complete the course within one year of the registration date;

(p) advertise or market a continuing education course that has not been:

(i) approved by the division; and

(ii) issued a current continuing education course certification number; or

(q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

R162-2f-401e. Instructor Conduct.

(1) Affirmative duties. An instructor shall:

(a) adhere to the approved outline for any course taught;

(b) comply with a division request for information within ten business days of the date of the request; and

(c) maintain a professional demeanor in all interactions with students.

(2) Prohibited conduct. An instructor may not:

(a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(b) continue to teach any course after the course has expired and without renewing the course certification.

R162-2f-401f. Approved Forms.

The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

(1) August 27, 2008, Real Estate Purchase Contract;

(2) January 1, 1987, Uniform Real Estate Contract;

(3) October 1, 1983, All Inclusive Trust Deed;

(4) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(5) August 5, 2003, Addendum to Real Estate Purchase Contract;

(6) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;

(7) January 1, 1999, Buyer Financial Information Sheet;

(8) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(9) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(10) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and

(11) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

R162-2f-401g. Use of Personal Assistants.

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

(1) obtain the permission of the licensee's principal broker

before employing the individual;

(2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:

(a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;

(b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;

(c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;

(d) placing brokerage signs on listed properties;

(e) having keys made for listed properties; and

(f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;

(3) compensate a personal assistant at a predetermined rate that is not:

(a) contingent upon the occurrence of real estate transactions; or

(b) determined through commission sharing or fee splitting; and

(4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

R162-2f-401h. Requirements and Restrictions in Advertising.

(1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:

(a) a licensee advertises unlisted property in which the licensee has an ownership interest; and

(b) the advertisement identifies the licensee as "owner-agent" or "owner-broker."

(2) An advertisement that includes the name of an individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.

(3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.

(4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.

(5) An advertising team, group, or other marketing entity that is not registered as a brokerage:

(a) shall, in all types of advertising, clearly:

(i) disclose that the team, group, or other marketing entity is not itself a brokerage; and

(ii) state the name of the registered brokerage with which the property being advertised is listed;

(b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and

(c) may not advertise as an "owner-agent" or "owner-broker."

(6)(a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(22).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-401i. Standards for Real Estate Auctions.

For auctions of real property in this state:

(1) the auctioneer or auction company shall:

(a) be licensed as a principal broker under Utah Code Title 61, Chapter 2f; or

(b) affiliate with a licensed principal broker for purposes of advertising and conducting all aspects of the auction;

(2) the auctioneer or auction company shall not advertise the services of the auctioneer or auction company directly to an owner of real property who is already subject to an agency agreement;

(3) if an auctioneer or auction company affiliates with a principal broker as provided in Utah Administrative Code R162-2f-401i(1)(b), the principal broker shall:

(a) 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;

(b) ensure that advertising and promotional materials associated with an auction name the principal broker;

(c) attend and supervise the auction;

(d) ensure that any purchase agreement used at the auction is completed by an individual holding an active Utah real estate license and is filled out in compliance with Section 61-2f-306;

(e) ensure that any money deposited at the auction is placed in trust pursuant to Utah Administrative Code R162-2f-401c(1)(i); and

(f) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

R162-2f-401j. Standards for Property Management.

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling all duties related to supervision per Section 61-2f-401(12), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including this Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

(a) providing a prospective tenant with access to a rental unit;

(b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and
(g) inspecting units.
(4) Within 30 days of the termination of a contract with a property owner for property management services, the principal broker shall deliver all trust money to the property owner, the property owner's designated agent, or other party as designated under the contract with the property owner.

R162-2f-401k. Recordkeeping Requirements.
A principal broker shall:
(1) maintain and safeguard the following records to the extent they relate to the business of a principal broker:
(a) all trust account records;
(b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;
(c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and
(d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection R162-2f-401c(1)(f);
(2) maintain the records identified in Subsection R162-2f-401k(1):
(a)(i) physically:
(A) at the principal business location designated by the principal broker on division records; or
(B) where applicable, at a branch office as designated by the principal broker on division records; or
(ii) electronically, in a storage system that complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act; and
(b) for at least three calendar years following the year in which:
(i) an offer is rejected; or
(ii) the transaction either closes or fails;
(3) upon request of the division, make any record identified in Subsection R162-2f-401k(1) available for inspection and copying by the division;
(4) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained; and
(5) upon filing for brokerage bankruptcy, notify the division in writing of:
(a) the filing; and
(b) the current location of brokerage records.

R162-2f-401l. Gifts and Inducements.
(1) An inducement gift is permissible and is not an illegal sharing of commission if the principal broker or affiliated licensee offering the inducement gift to a buyer or a seller complies with the underwriting guidelines that apply to any loan in the transaction for which the inducement has been offered.
(2) A closing gift is permissible and is not an illegal sharing of commissions.

R162-2f-402. Investigations.
The investigative and enforcement activities of the division shall include the following:
(1) verifying information provided on new license applications and applications for license renewal;
(2) evaluation and investigation of complaints;
(3) auditing licensees' business records, including trust account records;
(4) meeting with complainants, respondents, witnesses and attorneys;
(5) making recommendations for dismissal or prosecution;
(6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;
(7) working with the assistant attorney general and representatives of other state and federal agencies; and
(8) entering into proposed stipulations for presentation to the commission and the director.

R162-2f-403a. Trust Accounts - General Provisions.
(1) A principal broker shall:
(a)(i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and
(ii) if engaged in property management, refer to Subsection R162-2f-403b(3);
(b) at the time a trust account is established, notify the division in writing of:
(i) the account number;
(ii) the address of the bank or credit union where the account is located; and
(iii) the type of activity for which the account is used.
(2) A trust account maintained by a principal broker shall be non-interest-bearing, unless:
(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;
(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;
(c) the person designated under this Subsection (2)(b):
(i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and
(ii) operates exclusively to provide grants to affordable housing programs in Utah; and
(d) the affordable housing program that is the recipient of the grant under this Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.
(3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.
(4) Records of deposits to a trust account shall include:
(a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);
(b) identification of payee and payor;
(c) amount of deposit;
(d) location of property subject to the transaction; and
(e) date and place of deposit.
(5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:
(a) the business name of the registered entity;
(b) the address of the registered entity;
(c) clear identification of the trust account from which the disbursement is made, including:
(i) account name; and
(ii) account number;
(iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);
(iv) date of disbursement;
(v) clear identification of payee and payor;
(vi) amount disbursed;
(vii) notation identifying the purpose for disbursement; and
(viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.
(6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.
(7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which

party's claim is valid, the principal broker may:

(a) interplead the funds into court and thereafter disburse:

(i) upon written authorization of the party who will not receive the funds; or

(ii) pursuant to the order of a court of competent jurisdiction; or

(b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(i) no party has filed a civil suit arising out of the transaction; and

(ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(8) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

(9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:

(a) maintain a date-sequential record of all deposits to and disbursements from the account, including or cross-referenced to the information specified in Subsection R162-2f-401c(1)(k);

(b) maintain a current, running total of the balance contained in the trust account;

(c)(i) maintain records sufficient to detail the final disposition of all funds associated with each transaction; and

(ii) ensure that each closed transaction balances to zero;

(d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and

(e) upon request, make all trust account records available to the division for auditing or investigation.

(10) The principal broker shall notify the division within 30 days if:

(a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and

(b) the imbalance cannot be cured within the 30-day notification period.

R162-2f-403b. Real Estate Trust Accounts.

(1) A real estate trust account shall be used for the purpose of securing client funds:

(a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

(b) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

(c) collected in the performance of property management duties, pursuant to this Subsection (3).

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than $500 of the principal broker's own funds.

(3)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust account that is:

(i) separate from the real estate trust account; and

(ii) operated in accordance with Subsection R162-2f-403c.

(b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.

(4) Unless otherwise agreed pursuant to this Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:

(a) obtaining written authorization from the buyer and seller, through contract or otherwise;

(b) closing or otherwise terminating the transaction;

(c) delivering the settlement statement to the buyer and seller;

(d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;

(e) making a record of each disbursement; and

(f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.

(5) A principal broker may disburse funds from a real estate trust account only in accordance with:

(a) specific language in the Real Estate Purchase Contract authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(6) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

(7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

R162-2f-403c. Property Management Trust Accounts.

(1) As of January 1, 2014, a trust account that is used exclusively for property management purposes shall be used to secure the following:

(a) tenant security deposits;

(b) rents; and

(c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses.

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into a property management trust account any funds belonging to the principal broker without:

(a) maintaining records to clearly identify the total amount belonging to the principal broker; or

(b) performing a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the principal broker.

(3) A principal broker may disburse funds from a property management trust account only in accordance with:

(a) specific language in the property management contract or tenant lease agreement, as applicable, authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(4) A principal broker who transfers funds from a property management trust account for any purpose shall maintain records to clearly evidence that:

(a) prior to making the transfer, the principal broker verified the money as belonging to the property owner for whose benefit, or on whose instruction, the funds are transferred;

(b) any money transferred into an operating account as the principal broker's property management fee is earned according to the terms of the principal broker's contract with the property owner;

(c) any transfer for maintenance, repair, or similar purpose is:

(i) authorized according to the terms of the applicable property management contract, tenant lease agreement, or other

instruction of the property owner; and

(ii) used strictly for the purpose for which the transfer is authorized, with any excess returned to the trust account.

R162-2f-407. Administrative Proceedings.

(1) An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(2) Other adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be designated as either formal or informal in the division's notice of agency action or notice of proceeding, as applicable.

(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);

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing;

(c) appealing a division order denying or restricting a license; and

(d) when an application presents unusual circumstances, such that the division determines that the application should be heard by the commission.

(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 informal 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.

(6) Formal adjudicative proceedings shall be conducted pursuant to the Administrative Procedures Act and the rules promulgated by the Department of Commerce.

R162-2f-501. Appendices.

When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in the state of Utah.

TABLE 1
APPENDIX 1 - REAL ESTATE SALES 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

TABLE 2
APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT
EXPERIENCE TABLE

RESIDENTIAL

(a)	Each property management agreement	1 point per unit up to 5 points
(b)	Each unit leased	1.25 points per unit
*(c)	All other property management	0.25 pt/month

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building

(a)	Each property management agreement	1 point per unit up to 5 points
(b)	Each unit leased	1.25 points per unit
*(c)	All other property management	1 pt/month

*When calculating experience points from Table 2, the total combined monthly experience credit claimed for "All other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.

TABLE 3
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

KEY: real estate business, operational requirements, trust account records, notification requirements
December 22, 2016 **61-2f-103(1)**
Notice of Continuation August 12, 2015 **61-2f-105**
61-2f-203(1)(e)
61-2f-206(3)
61-2f-206(4)(a)
61-2f-306
61-2f-307

R277. Education, Administration.
R277-106. Utah Professional Practices Advisory Commission Appointment Process.
R277-106-1. Definitions.

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

B. "Nomination application" means:

(1) written and signed statement by the superintendent of the school district or charter school director in which the educator is currently employed, that the superintendent/director understands the time commitment of UPPAC members and supports the educator in applying for one three-year term as identified in statute. If the applicant is a school district superintendent or charter school director, the chair of the local/charter school board shall provide a statement of support for the educator;

(2) written and signed statement by the educator's building principal or director that the principal/director understands the time commitment of UPPAC members and supports the educator in applying for one three-year term. If the applicant is a principal, the applicant shall include a statement of understanding of the time commitment in the personal statement provided by the applicant;

(3) written and signed personal statement by the applicant expressing the applicant's desire to serve as a UPPAC member, a summary of the applicant's professional experience, including associations and professional affiliations; and

(4) the applicant's vita.

C. "Superintendent" means the State Superintendent of Public Instruction.

D. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, under Section 53A-6-301.

R277-106-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-303(1)(a) which directs the Board to adopt rules establishing procedures for nominating and appointing UPPAC members, 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 establish nomination and appointment procedures for UPPAC members.

R277-106-3. UPPAC Notification, Nomination and Application Process.

A. The UPPAC Executive Secretary shall notify school districts, charter schools and education organizations in writing of openings on UPPAC for the upcoming term by May 15 of the year in which UPPAC vacancies shall be filled by appointment by the Superintendent.

B. As provided under Section 53A-6-303(1)(b), nomination petitions shall be filed with the Superintendent.

R277-106-4. UPPAC Selection Process.

A. The UPPAC Executive Secretary shall review all complete and properly filed applications and may make recommendation(s), per direction from the Superintendent, to the Superintendent prior to May 30 of the year in which membership on UPPAC is sought.

(1) The Executive Secretary may seek additional information to provide to the Superintendent about the experience and qualification of UPPAC applicants.

(2) Recommendations shall maintain a representative balance of six teachers and three other educators.

(3) Recommendations shall consider rural/urban, elementary/secondary, gender, ethnic, and geographical balance of UPPAC members.

B. The Superintendent shall make UPPAC appointments consistent with Section 53A-6-303.

C. Community members

(1) Community members may be nominated by the state organization or a local chapter of the education organization with the largest membership of parents of students and teachers in the state.

(2) Community members who are members of a parent/teacher, parent/teacher/student organization may submit their names to the education organization described in Section 53A-6-302(1) for nomination by the organization.

(3) The two community members shall not serve concurrent terms.

D. If current UPPAC members desire to serve for a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 15 of the year in which the member's term expires.

E. The applications(s) of (a) UPPAC member(s) seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

F. The Executive Secretary may retain applications for consideration for mid-term vacancies or for vacancies in subsequent years.

R277-106-5. Filling of Vacancies.

A. The UPPAC Executive Secretary shall recommend names to the Superintendent to fill vacancies that occur midyear.

B. The UPPAC Executive Secretary may recommend names of previous applicants for UPPAC vacancies or names from school districts or charter schools or other groups or areas of the state that are under represented to fill vacancies.

KEY: professional competency, professional practices*
November 7, 2013 Art X Sec 3
Notice of Continuation December 14, 2016 53A-6-303(1)(a)
53A-1-401(3)

R277. Education, Administration.
R277-409. Public School Membership in Associations.
R277-409-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to place limitations on public school membership in certain associations with rules or policies that conflict with Board policies.

R277-409-2. Definitions.

(1) "Association" means an organization that governs or regulates a student's participation in an interscholastic activity.

(2) "Interscholastic activity" means an activity within the state in which the students that participate represent a school in the activity.

(3) "Recruiting" means a solicitation or conversation:

(a) initiated by:

(i) an employee of a school or school district;

(ii) a coach or advisor of an interscholastic activity; or

(iii) a member of a booster, alumni, or other organization that performs a substantially similar role as a booster organization, affiliated with a school or school district; and

(b) to influence a student, or the student's relative or legal guardian, to transfer to a school for the purpose of participating in an interscholastic activity at the school.

R277-409-3. Membership Restrictions.

(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-409-3.

(2) An association shall permit the Board to audit the association's:

(a) financial statements; and

(b) compliance with Utah Code, Board rule, and the association's bylaws, policies, rules, and best practices.

(3) An association may not treat similarly situated schools differently in the association's designation of division classifications, or in applying other association policies, based solely on the school's status as a charter school or district public school.

(4) An association may sanction a school, coach, or individual who oversees or works with students as part of an interscholastic activity of a public school if the association finds that the coach or individual:

(a) engaged in recruiting activities; or

(b) violated any other rule or policy of the association.

(5) An association shall establish a policy or rule to govern the association's use of student data that complies with the student data privacy requirements of:

(a) FERPA;

(b) Title 53A, Chapter 1, Part 14, Student Data Protection Act;

(c) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(d) R277-484.

(6) An association shall establish policies or rules that require:

(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-515; and

(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:

(i) child sexual abuse prevention as described in Section 53A-13-112;

(ii) the prevention of bullying, cyber-bullying, hazing, harassment, and retaliation as described in:

(A) Title 53A, Chapter 11a, Bullying and Hazing; and

(B) R277-613; and

(iii) the professional standards described in Subsection (6)(a).

(7) An association shall establish procedures and mechanisms to:

(a) monitor LEA compliance with the association's training requirements described in Subsection (6);

(b) sanction individuals who violate the association's professional standards described in Subsection (6)(a);

(c) track individuals who violate the association's standards described in Subsection (6)(a); and

(d) prohibit individuals who have violated the association's standards described in Subsection (6)(a) from coaching, overseeing, or working with students as part of an interscholastic activity.

(8) An association shall establish a policy or rule that requires the association to follow requirements similar to the requirements of:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63G, Chapter 2, Government Records Access and Management Act.

KEY: schools, memberships, associations
December 8, 2016 **Art X Sec 3**
53A-1-401

R277. Education, Administration.
R277-438. Dual Enrollment.
R277-438-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53A-1-402(1)(b), which directs the Board to establish rules and minimum standards for access to programs;

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(d) Section 53A-11-102.5, which governs dual enrollment.

(2) The purpose of this rule is to provide consistent statewide procedures and criteria for a home school and private school student's participation in a public school course, co-curricular activity, or program.

R277-438-2. Definitions.

(1) "Co-curricular activity" means a school district or school activity, course, or experience, outside of school hours, that also includes a required regular school day component.

(2) "Dual enrollment student" means a student who is enrolled simultaneously in:

(a) a private school or home school; and

(b) a public school.

(3) "Eligibility" means a student's fitness and availability to participate in a school course, activity, or program governed by this rule that is determined by a number of factors, including:

(a) residency;

(b) scholarship;

(c) age; and

(d) the number of semesters of participation in a particular course, activity, or program.

(4) "Full-time student" means a student earning the school district designated number and type of credits required for participation in a course, activity, or program in the school district in which the student's parent resides.

(5) "Home school" means a school in the state comprised of one or more students officially excused from compulsory public school attendance under Section 53A-11-102.

(6) "Private school" means a school in the state that:

(a) is maintained by a private individual or corporation;

(b) is maintained and operated not at public expense;

(c) is generally supported, in part at least, by tuition fees or charges;

(d) operates as a substitute for, and gives the equivalent of, instruction required in a public school;

(e) employs a teacher able to provide the same quality of education as a public school teacher;

(f) is established to operate indefinitely and independently, not dependent upon age of the students available or upon individual family situations; and

(g) is licensed as a business by the Department of Commerce.

(7)(a) "Resident school" means a public school:

(i) that is under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards; and

(ii) within whose boundaries a student's custodial parent resides.

(b) "Resident school" does not mean a charter school or online school.

(8) "Student participation fee" means a fee charged to all participating students by the resident school for enrollment in a course, program, or co-curricular school activity consistent with Rule R277-407.

R277-438-3. Private and Home School Student Participation in a Public School Course, Co-curricular Activity, or Program.

(1) A student who is exempt from compulsory public school education by a local school board for instruction in a private or home school may enroll in the student's resident school as a dual enrollment student and participate in a course, co-curricular activity, or program at the student's resident school if the student:

(a) takes courses comparable to resident school courses or earns credit under options outlined in Section R277-700-6 in at least as many of the designated courses as required by the local school board of a student for participation in the course, co-curricular activity, or program; or

(b) demonstrates competency to the satisfaction of the LEA in the subject matter taught in the courses required by the local school board of a student for participation the course, co-curricular activity or program.

(2) A public school that is not the student's resident school may allow a private or home school student to enroll in the public school, including in a single course or program, as a dual enrollment student, at the discretion of the public school, and in accordance with Subsection 53A-11-102.6(2)(d).

(3)(a) A private school dual enrollment student is eligible to participate in a course, co-curricular activity, or program consistent with the eligibility standards for a full-time student, including providing a report card to the resident school or other school described in Subsection (2) upon request.

(b) A home school dual enrollment student is eligible to participate in a course, co-curricular activity, or program if eligibility standards are met consistent with Subsections 53A-11-102.6(5) through 53A-11-102.6(13).

R277-438-4. Fees for Private and Home School Students.

A school or school district shall waive a student participation fee for a dual enrollment private or home school student if:

(1) the student is eligible; and

(2) the parent provides required documentation under Section 53A-12-103 and Rule R277-407, School Fees.

R277-438-5. Miscellaneous Issues.

(1) A dual enrollment student attending an activity or a portion of a school day under Section 53A-11-102.5 is subject to the same behavior and discipline rights and requirements of a full-time student.

(2) A dual enrollment student who attends an activity or a portion of the school day is subject to the administrative scheduling and teacher discretion of the public school.

(3)(a) A dual enrollment student with a disability may participate as a dual enrollment student consistent with law, this rule and 34 CFR 300.450 through 300.455.

(b) A public school that enrolls a dual enrollment student shall prepare an IEP for a student described in Subsection (3)(a) prior to the student's participation in dual enrollment using comparable procedures to those required for identifying and evaluating public school students.

(c) A student with a disability seeking dual enrollment is entitled to services for the time, or for the number of courses, the student is enrolled in the public school, based on the decision of the student's IEP team.

(d) Decisions about the scheduling and manner of services provided is the responsibility of the enrolling public school and school district personnel.

(e) A school or a school district is not prohibited from providing a service to a student who is not enrolled full time in excess of those required by this section.

KEY: public education, dual enrollment

December 8, 2016	Art X Sec 3
Notice of Continuation October 14, 2016	53A-1-402(1)(b)
	53A-1-401
	53A-11-102.5

R277. Education, Administration.
R277-511. Academic Pathway to Teaching (APT) Level 1 License.
R277-511-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-6-104, which allows the board by rule, to rank, endorse, or otherwise to:

(i) classify licenses; and

(ii) establish the criteria for an educator to obtain or retain a license; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide standards and procedures:

(a) for an applicant to obtain an Academic Pathway to Teaching (APT) level 1 license; and

(b) for an APT level 1 license holder to obtain a level 2 license.

R277-511-2. Definitions.

(1)(a) "APT level 1 license" means a license obtained through the academic path to teaching process as described in this rule.

(b) "APT level 1 license" includes:

(i) an APT level 1 license with an Elementary (K-6) Concentration; and

(ii) an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(2) "LEA administrator" means a school building principal or LEA administrator who:

(i) supervises an APT level 1 licensee; and

(ii) may recommend the APT level 1 licensee for Level 2 licensure to the Superintendent as described in Section R277-511-7.

(3) "Teacher leader" means a teacher designated as a teacher leader as described in R277-513.

R277-511-3. Superintendent Responsibilities.

(1) The Superintendent shall create an application for an APT level 1 license and publish the application on the Board's website.

(2) The Superintendent shall approve an application for an APT level 1 license if the applicant meets all of the requirements of Section R277-511-4 or Section R277-511-5.

R277-511-4. Requirements for an APT Level 1 License with an Elementary (K-6) Concentration.

(1) To qualify for an APT level 1 license with an Elementary (K-6) Concentration, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on the Elementary Education: Multiple Subjects Praxis Assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) An APT level 1 license with an Elementary (K-6) Concentration is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

R277-511-5. Requirements for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(1) To qualify for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on one of the following that is related to the subject, field, or area to which they are seeking an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement:

(i) a Praxis II Subject Assessment; or

(ii) another Board-approved content knowledge assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) Except as provided in Subsection (3), an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

(3) An APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement holder may only seek an additional endorsement after the APT Level 1 License with a Secondary (6-12) Concentration holder obtains a level 2 license.

R277-511-6. Requirements for an LEA that Employs an APT Level 1 License Holder.

If an LEA employs an APT level 1 license holder, the LEA shall:

(1) assign a teacher leader to serve as a mentor to the APT level 1 license holder;

(2) prepare the APT level 1 license holder to meet the Utah Effective Educator Standards described in R277-530-5;

(3) prepare a mentoring plan for each APT Level 1 license holder; and

(4) provide an APT Level 1 license holder's mentoring plan to the Superintendent upon request.

R277-511-7. Requirements for an APT Level 1 License Holder to Gain a Level 2 License.

(1) To receive a Level 2 license, an APT level 1 license holder shall:

(a)(i) complete three years of teaching full-time in one LEA under supervision of the teacher leader mentor and LEA administrator; or

(ii) complete four years of at least 0.4 FTE teaching in one LEA under the supervision of a teacher leader mentor and the LEA administrator;

(b) satisfy all Entry Years Enhancement for Quality Teaching requirements designated in R277-522;

(c) complete the requirements of the APT Level 1 license holder's mentoring plan;

(d) complete any additional requirements of the recommending LEA, including coursework and professional learning that the recommending LEA requires;

(e) complete the educator ethics review on the Board's website;

(f) renew the educator's background check as required in R277-516; and

(g) obtain a recommendation from the LEA administrator; and

(h) pay applicable licensing fees.

(2)(a) An APT level 1 license holder seeking a level 2 license may request a one year extension of the APT level 1 license at the recommendation of the LEA Administrator up to a maximum of two one-year extensions.

(b) Unless required by the recommending LEA, the years of teaching in Subsection (1)(a) do not need to be consecutive.

KEY: Academic Pathway to Teaching, educator licensure
December 8, 2016 **Art X Sec 3**
53A-6-104
53A-1-401

R277. Education, Administration.
R277-526. Paraeducator to Teacher Scholarship Program.
R277-526-1. Definitions.

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

B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

C. "Paraeducator" for purposes of this rule means a school employee who:

(1) delivers instruction under the direct supervision of a teacher; and

(2) works in an area where there is a shortage of qualified teachers, such as special education, Title I, English as a Second Language, reading remediation, math, or science.

D. "Paraeducator Scholarship Selection Committee (Committee)" means the committee established by the Board to select scholarship recipients.

E. "Scholarship" for purposes of this rule means funds provided by the Board directly to a Utah institution of higher education on behalf of the paraeducator to pay only for the actual and documented costs for tuition toward an associate's or a bachelor's degree program to become a licensed teacher.

F. "USOE" means the Utah State Office of Education.

R277-526-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-6-802(8) which requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.

B. The purpose of this rule is to distribute funds to paraeducators seeking to become licensed educators and to establish application and accountability procedures to provide funding to prospective educators directly and fairly.

R277-526-3. Scholarship Amounts and Requirements.

A. A paraeducator stipend awarded under this rule shall be used solely and completely for expenses approved by Section 53A-6-802 and this rule annually between July 1 and the following June 30.

B. A scholarship recipient shall remain continuously employed, consistent with the employment agreement and Section 53A-6-802(7).

C. A scholarship recipient shall provide documentation of progress toward graduation, as requested by the employer or the Board.

D. A scholarship recipient who does not remain employed for the duration of the scholarship period or who does not satisfactorily complete funded courses may be responsible to reimburse the Board for the amount of scholarship funding.

E. The Committee shall determine funding for applicants from applications received from LEAs after considering the number of applications received and the amount of funding available.

F. The Committee may develop and consider selection criteria including:

(1) support from the recommending LEA; and

(2) geographical distribution of recipients.

R277-526-4. Applicant Scholarships Recipient and LEA Responsibilities.

A. Scholarship recipients shall be employed for a minimum of 10 hours per week by a public LEA at the time of application for the Paraeducator Scholarship and during any year in which the paraeducator receives the scholarship.

B. Scholarship applicants shall submit completed applications found on the USOE website to their employers.

C. Applicants shall provide university transcripts and information about tuition expenses only on the completed application based on the most recent information available from the Utah institution of higher education to which the applicant has either been admitted or made application.

D. LEAs shall submit all applications to the USOE on or before May 15 annually.

E. Scholarship recipients and LEAs whose employees receive funding under this program shall cooperate on any assessment required by the Board.

R277-526-5. State Board of Education Staff/Committee Responsibilities.

A. The Board shall establish a Paraeducator Scholarship Selection Committee and working procedures for the Committee consistent with 53A 6-802(4) by May 15, 2008.

B. The Committee shall consist of:

(1) one Board member designated by the Board;

(2) one representative of the Board of Regents designated by the Board of Regents;

(3) one representative of the largest parent/teacher association in the state;

(4) no more than two additional representatives of the general public designated by the Board consistent with Section 53A-6-802(4).

C. The Committee shall receive completed applications from LEAs consistent with R277-526-4.

D. The Committee shall provide names of scholarship recipients to the Board for review and comment by August 1, annually.

E. The Committee or the Board may require a summary assessment of the increased number of paraeducators who become educators and other program results from participating scholarship recipients and LEAs.

KEY: paraeducators, scholarships

April 7, 2014	**Art X Sec 3**
Notice of Continuation December 14, 2016	**53A-1-401(3)**
	53A-6-802(8)

R277. Education, Administration.
R277-604. Private School, Home School, and Bureau of Indian Affairs (BIA) Student Participation in Public School Achievement Tests.
R277-604-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-1-603, which directs the Board to require school districts and charter schools to administer the U-PASS assessment system to uniformly measure statewide student performance.

(2) The purpose of this rule is:

(a) to provide opportunities for Utah private school students and home school students who are Utah residents, and Utah students attending Bureau of Indian Affairs schools to participate in U-PASS;

(b) to maintain the integrity and security of U-PASS;

(c) to provide an orderly and manageable administrative process for public schools to include Utah private school students and home school students who are Utah residents, and Utah students attending BIA schools to participate in U-PASS if they so desire; and

(d) to protect the public investment in U-PASS by making assessments available to students who are not funded by the public education system through fair, reasonable, and consistent practices.

R277-604-2. Definitions.

(1) "Home school student" means a student who has been excused from compulsory education and for whom documentation has been completed under Section 53A-11-102.

(2) "Private school" means a school that is not a public school but:

(a) has a current business license through the Utah Department of Commerce;

(b) is accredited as described in R277-410; and

(c) has and makes available a written policy for maintaining and securing student records.

(3) "Utah Performance Assessment System for Students" or "U-PASS" means:

(a) the summative adaptive assessment of a student in grades 3 through 12 in basic skills courses;

(b) the online writing assessment in grades 3 through 11;

(c) the college readiness assessment; and

(d) the summative assessment of a student in grade 3 to measure reading grade level using the end of year benchmark reading assessment.

R277-604-3. Private Schools.

(1) Private school students who are Utah residents, as defined under 53A-2-201, may participate in U-PASS.

(2) Private school students who are not Utah residents may participate in U-PASS only by payment in advance of the full cost of individual assessments as determined by local school board policy.

(3)(a) Private schools that are interested in participating in U-PASS may, at the public school district's discretion, do so only in the public school district in which the private school is located.

(b) School districts shall determine at which public schools within the district private school students may take achievement tests.

(c) A private school may request the following from the school district in which the private school is located:

(i) an annual schedule of U-PASS dates;

(ii) the locations at which private schools may be tested; and

(iii) written policies for private school student participation.

(4) A school district shall develop a policy regarding private school student participation in U-PASS, which shall include:

(a) reasonable costs for the participation of Utah private school students in U-PASS to be paid in advance by either the student or the student's private school;

(b) an explanation of reasonable costs including costs for administration materials, scoring, and reporting of assessment results;

(c) notice to private school administrators of any required private school administrator participation in monitoring or proctoring of tests; and

(d) reasonable time lines for private school requests for participation and school district or school response.

R277-604-4. Home School Students.

(1) A home school student who is a Utah resident, as defined under Section 53A-2-201, may participate in U-PASS as provided in this rule.

(2) A home school student may participate in U-PASS only if the student has satisfied the home schooling requirements of Section 53A-11-102.

(3) A home school student who desires to participate in U-PASS may participate in:

(a) the public school district in which the home school student's parent or legal guardian resides; or

(b) a charter school.

(4) A home school student or parent may request the following from the school district in which the home school student or parent resides or a charter school:

(a) an annual schedule of U-PASS dates;

(b) the locations at which home school students may be tested; and

(c) written policies for home school student participation.

(5) A school district or charter school shall develop a policy regarding home school student participation in U-PASS, which:

(a) may not require a home school student to pay a fee that is not charged to traditional students;

(b) shall include notice to home school students or parents of any required parent or adult participation in monitoring or proctoring of tests; and

(c) shall include reasonable time lines for home school requests for participation and school district or school response.

R277-604-5. Bureau of Indian Affairs (BIA) Students.

(1) BIA schools may participate in all U-PASS requirements for all Utah students.

(2) Materials and training shall be provided to BIA schools from the public school district in which the school is located on the schedule that applies to Utah school districts.

R277-604-6. LEA Responsibilities.

An LEA shall comply with the following when administering U-PASS to a private, home school, or Bureau of Indian Affairs' student:

(1) Board Rule R277-404; and

(2) the Standard Test Administration and Testing Ethics Policy described in R277-404-3.

KEY: home school, private school, participation, achievement tests
December 8, 2016 **Art X Sec 3**
Notice of Continuation October 14, 2016 **53A-1-401**

53A-1-603(1)(a)

R277. Education, Administration.
R277-605. Coaching Standards and Athletic Clinics.
R277-605-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53A-1-402(1)(b), which directs the Board to adopt rules regarding access to programs.

(2) The purpose of this rule is to specify standards for school athletic and activity coaches and standards for athletic clinics and workshops.

R277-605-2. Athletics and the Core Curriculum.

High school competitive sports programs shall be supplementary to the high school curriculum.

R277-605-3. Coaches and School Activity Leaders as Supervisors and Role Models.

(1) Coaches and other designated school leaders shall diligently supervise student athletes at all times while on school-sponsored activities, including supervising students:

(a) on the field, court, or other competition or performance sites;

(b) in locker rooms, in seating areas, in eating establishments, and in lodging facilities; and

(c) while traveling.

(2) A coach or other designated school leader shall be an exemplary role model and may not use alcoholic beverages, tobacco, controlled substances, or participate in promiscuous sexual relationships while on school-sponsored activities.

(3) Coaches, assistants and advisors shall act in a manner consistent with Section 53A-11-908 and may not:

(a) use foul, abusive, or profane language while engaged in school related activities; or

(b) permit hazing, demeaning, or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.

R277-605-4. Athletic and Activity Clinics.

(1) School personnel, activity leaders, coaches, advisors, and other personnel may not require students to attend out-of-school camps, clinics, or workshops for which the personnel, activity leaders, coaches, or advisors receive remuneration from a source other than the school or district in which they are employed.

(2) Required or voluntary participation in summer or other off-season clinics, workshops, and leagues may not be used as eligibility criteria for team membership, participation in extracurricular activities, or for the opportunity to try out for school-sponsored programs.

KEY: extracurricular activities

December 8, 2016	**Art X Sec 3**
Notice of Continuation October 14, 2016	**53A-1-401**
	53A-1-402(1)(b)

R277. Education, Administration.
R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.
R277-609-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53A-1-402(1)(b), which requires the Board to establish rules concerning discipline and control;

(d) Section 53A-15-603, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction;

(e) Section 53A-11-1603, which requires the Board to adopt rules regarding training programs for school principals and school resource officers; and

(f) Section 53A-11-901, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

(2)(a) The purpose of this rule is to outline requirements for school discipline plans and policies.

(b) An LEA's written policies shall include provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

R277-609-2. Definitions.

(1) "Discipline" includes:

(a) imposed discipline; and

(b) self-discipline.

(2) "Disruptive student behavior" includes:

(a) the grounds for suspension or expulsion described in Section 53A-11-904; and

(b) the conduct described in Subsection 53A-11-908(2)(b).

(3)(a) "Emergency safety intervention" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others.

(b) An "emergency safety intervention" is not for disciplinary purposes.

(4) "Functional Behavior Assessment" or "FBA" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

(5) "Immediate danger" means the imminent danger of physical violence or aggression towards self or others, which is likely to cause serious physical harm.

(6) "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

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

(8) "Physical restraint" means personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely.

(9) "Plan" means an LEA and school-wide written model for prevention and intervention addressing student behavior management and discipline procedures for students.

(10) "Program" means an instructional or behavioral program, including a program:

(a) provided by contract private providers under the direct supervision of public school staff;

(b) that receives public funding; or

(c) for which the Board has regulatory authority.

(11) "Policy" means standards and procedures that include:

(a) the provisions of Section 53A-11-901 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that:

(i) defines hazing, bullying, cyber-bullying, and harassment;

(ii) prohibits hazing and bullying;

(iii) requires annual discussion and training designed to prevent hazing, bullying, cyber-bullying, discipline, emergency safety interventions, and harassment among school employees and students; and

(iv) provides for enforcement through employment action or student discipline.

(12) "Qualifying minor" means a school-age minor who:

(a) is at least nine years old; or

(b) turns nine years old at any time during the school year.

(13) "School" means any public elementary or secondary school or charter school.

(14) "School board" means:

(a) a local school board; or

(b) a local charter board.

(15) "School employee" means:

(a) a school teacher;

(b) a school staff member;

(c) a school administrator; or

(d) any other person employed, directly or indirectly, by an LEA.

(16) "Seclusionary time out" means that a student is:

(a) placed in a safe enclosed area by school personnel in accordance with the requirements of Rules R392-200 and R710-4;

(b) purposefully isolated from adults and peers; and

(c) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

(17) "Section 504 accommodation plan," required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(18) "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

R277-609-3. Incorporation of Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual by Reference.

(1) This rule incorporates by reference the LRBI Technical Assistance Manual, dated September 2015, provides guidance and information in creating successful behavioral systems and supports within Utah's public schools that:

(a) promote positive behaviors while preventing negative or risky behaviors; and

(b) create a safe learning environment that enhances all student outcomes.

(2) A copy of the manual is located at:

(a) http://www.schools.utah.gov/sars/Behavior.aspx; and

(b) the Utah State Board of Education.

R277-609-4. LEA Responsibility to Develop Plans.

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, and school discipline.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) A plan described in Subsection (1) shall include:
(a) the definitions of Section 53A-11-910;
(b) written standards for student behavior expectations, including school and classroom management;
(c) effective instructional practices for teaching student expectations, including:
(i) self-discipline;
(ii) citizenship;
(iii) civic skills; and
(iv) social skills;
(d) systematic methods for reinforcement of expected behaviors;
(e) uniform methods for correction of student behavior;
(f) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;
(g) an ongoing staff development program related to development of:
(i) student behavior expectations;
(ii) effective instructional practices for teaching and reinforcing behavior expectations;
(iii) effective intervention strategies; and
(iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;
(h) procedures for ongoing training of appropriate school personnel in:
(i) crisis intervention training;
(ii) emergency safety intervention professional development; and
(iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;
(i) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;
(j) policies and procedures, consistent with requirements of Rule R277-613, related to:
(i) bullying;
(ii) cyber-bullying;
(iii) harassment;
(iv) hazing; and
(v) retaliation;
(k) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:
(i) physical restraint, subject to the requirements of Section R277-609-5, except when a student:
(A) presents a danger of serious physical harm to self or others; or
(B) is destroying property;
(ii) prone, or face-down, physical restraint;
(iii) supine, or face-up, physical restraint;
(iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;
(v) mechanical restraint, except:
(A) protective or stabilizing restraints;
(B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and
(C) any device used by a law enforcement officer in carrying out law enforcement duties;
(vi) chemical restraint, except as:
(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and
(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;
(vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and
(viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:
(A) school personnel, the family, and the IEP team agree less restrictive means which meet circumstances described in Section R277-608-5 have been attempted;
(B) a FBA has been conducted; and
(C) a positive behavior intervention plan based on data analysis has been written into the plan and implemented.
(l) direction for dealing with bullying and disruptive students;
(m) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;
(n) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;
(o) identification of individuals who shall receive notices of disruptive and bullying student behavior;
(p) a requirement to provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;
(q) strategies to provide for necessary adult supervision;
(r) a requirement that policies be clearly written and consistently enforced;
(s) notice to employees that violation of this rule may result in employee discipline or action;
(t) gang prevention and intervention policies in accordance with Subsection 53A-15-603(1); and
(u) provisions that account for an individual LEA's or school's unique needs or circumstances, including:
(i) the role of law enforcement; and
(ii) emergency medical services; and
(iii) a provision for publication of notice to parents and school employees of policies by reasonable means.
(4) A plan described in Subsection (1) may include:
(a) the provisions of Subsection 53A-15-603(2); and
(b) a plan for training administrators and school resource officers in accordance with Section 53A-11-1603.

R277-609-5. Physical Restraint and Seclusionary Time Out.
(1) When used consistently with an LEA plan under Subsection R277-609-4(1);
(a) a physical restraint must be immediately terminated when:
(i) a student is no longer an immediate danger to self or others; or
(ii) a student is in severe distress; and
(b) the use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria, as outlined in LEA policies, must be implemented.
(2) If a public education employee physically restrains a student, the school or the public education employee shall immediately notify:
(a) the student's parent or guardian; and
(b) school administration.
(3) A public education employee may not use physical restraint on a student for more than 30 minutes.
(4) In addition to the notice described in Subsection (2), if a public education employee physically restrains a student for more than fifteen minutes, the school or the public education employee shall immediately notify:
(a) the student's parent or guardian; and
(b) school administration.
(5) An LEA may not use physical restraint as a means of discipline or punishment.
(6) If a public education employee uses seclusionary time out, the public education employee shall:
(a) use the minimum time necessary to ensure safety;

(b) use release criteria as outlined in LEA policies;
(c) ensure that any door remains unlocked;
(d) maintain the student within line of sight of the public education employee;
(e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and
(f) ensure that the enclosed area meets the fire and public safety requirements described in R392-200 and R710-4.
(7) If a student is placed in seclusionary time out, the school or the public education employee shall immediately notify:
(a) the student's parent or guardian; and
(b) school administration.
(8) A public education employee may not place a student in a seclusionary time out for more than 30 minutes.
(9) In addition to the notice described in Subsection (7), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately notify:
(a) the student's parent or guardian; and
(b) school administration.
(10) Seclusionary time out may only be used for maintaining safety.
(11) A public education employee may not use seclusionary time out as a means of discipline or punishment.

R277-609-6. Implementation.
(1) An LEA shall implement strategies and policies consistent with the LEA's plan required in Section R277-609-4.
(2) An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.
(3) An LEA shall implement positive behavior interventions and supports as part of the LEA's continuum of behavior interventions strategies.
(4)(a) An LEA shall provide a formal written assessment of a habitually disruptive student as part of a student's suspension or expulsion process that results in court involvement, once an LEA receives information from the court that disruptive student behavior will result in court action.
(b) An LEA shall use assessment information to connect parents and students with supportive school and community resources.
(5) Nothing in state law or this rule restricts an LEA from implementing policies to allow for suspension of students of any age consistent with due process requirements and consistent with all requirements of the Individuals with Disabilities Education Act 2004.
(6) An LEA shall establish an Emergency Safety Intervention (ESI) Committee before September 1, 2015.
(7) The LEA ESI Committee:
(a) shall include:
(i) at least two administrators;
(ii) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and
(iii) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;
(b) shall meet often enough to monitor the use of emergency safety intervention in the LEA;
(c) shall determine and recommend professional development needs; and
(d) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions.
(8) An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.
(9) The Superintendent shall define the procedures for the collection, maintenance, and review of records described in Subsection (8).
(10) An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.

R277-609-7. Special Education Exception(s) to this Rule.
(1) An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.
(2) The Superintendent shall periodically review:
(a) all LEA special education behavior intervention plans, procedures, or manuals; and
(b) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System.

R277-609-8. Parent/Guardian Notification and Court Referral.
(1) Through school administrative and juvenile court referral consequences, LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.
(2) An LEA shall establish policies that:
(a) provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;
(b) provide for notices of disruptive behavior to be issued by schools to qualifying minors and parents consistent with:
(i) numbers of disruptions and timelines in accordance with Section 53A-11-910;
(ii) school resources available;
(iii) cooperation from the appropriate juvenile court in accessing student school records, including:
(A) attendance;
(B) grades;
(C) behavioral reports; and
(D) other available student school data; and
(iv) provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.
(3)(a) When a crisis situation occurs that requires the use of an emergency safety intervention to protect the student or others from harm, a school shall notify the LEA and the student's parent or guardian as soon as possible and no later than the end of the school day.
(b) In addition to the notice described in Subsection (3)(a), if a crisis situation occurs for more than fifteen minutes, the school shall immediately notify:
(i) the student's parent or guardian; and
(ii) school administration.
(d) A notice described in Subsection (3)(a) shall be documented within student information systems (SIS) records.
(4)(a) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during a crisis situation upon request of the parent or guardian.
(b) Within 24 hours of a crisis situation, a school shall notify a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during a crisis situation.
(c) A parent or guardian may request a time to meet with school staff and administration to discuss a crisis situation.

R277-609-9. Model Policies.

(1) The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

(2) The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

R277-609-10. LEA Compliance.

If an LEA fails to comply with this rule, the Superintendent may withhold funds in accordance with Rule R277-114 or impose any other sanction authorized by law.

KEY: disciplinary actions, disruptive students, emergency safety interventions

December 8, 2016	**Art X Sec 3**
Notice of Continuation October 14, 2016	**53A-1-401**
	53A-1-402(1)
	53A-15-603
	53A-11-901

R277. Education, Administration.
R277-726. Statewide Online Education Program.
R277-726-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-15-1210, which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses;

(c) Section 53A-15-1213, which requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

(d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

R277-726-2. Definitions.

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Superintendent provided Statewide Online Education Program form.

(b) Except as provided in Subsection 53A-15-1208(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(4)(a) "Eligible student" means a student enrolled in grades 6-12 in a course that:

(i) is offered by a public school; and

(ii) provides the student the opportunity to earn high school graduation credit.

(b) "Eligible student" does not include a student enrolled in an adult education program.

(5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).

(6)(a) "Executed CCA" means a CCA that has been signed by all parties and received by Superintendent.

(b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8) "Online course" means a course of instruction offered through the Statewide Online Education Program.

(9) "Online course payment" means the amount withheld from a student's primary LEA and disbursed to the designated provider following satisfaction of the requirements of the law, and as directed in Section 53A-15-1207.

(10) "Online course provider" or "provider" means:

(a) a school district school;

(b) a charter school;

(c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or

(d) a program of an institution of higher education described in Subsection 53A-15-1205(3).

(11) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program.

(12) "Primary school of enrollment" means:

(a) a student's school of record; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(13) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(14) "Statewide assessment" means a test or assessment required under Rule R277-404.

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53A, Chapter 15, Part 12, Statewide Online Education Program Act.

(16) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.

(17) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second .5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's SEOP;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) A provider-initiated CCA may be sent directly to the Superintendent if the course is consistent with the student's SEOP.

(b) The primary school of enrollment is not required to meet with the student or parent.

(c) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

R277-726-4. Eligible Student and Parent Rights and Responsibilities.

(1)(a) An eligible student may register for program credits consistent with Section 53A-15-1204.

(b) Notwithstanding Subsection (1)(a), a student's primary LEA of enrollment or the Board may allow an eligible student to enroll in additional online courses consistent with Section 53A-15-1204 with documentation from the LEA.

(2) A student enrolled in a program course may earn no more credits in a year than the number of credits a student may earn by taking a full course load during the regular school day in the student's primary school of enrollment.

(3) An eligible student may register for more than the maximum number of credits described in Subsection 53A-15-1204(2) if:

(a) the student's SEOP indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53A-15-1206.

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the high school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

R277-726-5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA form, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

(a) in registration materials;

(b) on the LEA's website; and

(c) on the school's website.

(4) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

R277-726-6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall develop and provide a website for the program that provides information required under Section 53A-15-1212 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer statewide assessments consistent with Rule R277-404 for identified courses using LEA-adopted and state-approved assessments.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsections 53A-15-1006(2) and 53A-15-1208(3)(d).

(b) Course load standards may differ based on subject matter and differing accreditation standards.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to the Government Records Access and Management Act, (GRAMA).

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53A-15-1206(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53A, Chapter 15, Part 12, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

R277-726-7. Provider Requirements and Responsibilities.

(1)(a) A provider shall administer statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53A-15-1210 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for all statewide assessments.

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours in order to facilitate parent information.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

(a) consistency with course standards;

(b) criminal background checks for provider employees;

(c) documentation of student enrollment and participation; and

(d) compliance with:

(i) the IDEA;

(ii) Section 504; and

(iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

(a) Board procedures;

(b) Board timelines; and

(c) Sections 53A-15-1206, 53A-15-1206.5, 53A-15-1207, and 53A-15-1208.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) post fees on the provider website; and

(iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including protecting the confidentiality of a student's records and providing a parent and an eligible student access to records.

(7) Except as provided in Subsection R277-726-9, a provider shall submit a student's credit and grade to the Superintendent, primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider seeks to suspend a student from an online course for disciplinary reasons, the provider is responsible for all student due process procedures, including the IDEA and Section 504 of the Rehabilitation Act of 1973.

(b) A provider shall notify the Superintendent of a student's withdrawal, if the student is suspended for more than 10 days.

(10)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings in January and August annually.

(11) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(12) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(13) A provider shall maintain documentation of student work, including dates of submission, for program audit purposes.

(14) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(15) A provider shall inform a student and the student's parent of expectations for active participation in course work.

(16) An LEA may participate in the program as a provider by offering a school or program to a Utah student in grades 9-12 who is not a resident student of the LEA consistent with Section 53A-15-1205(2).

(17) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Section 53A-6-110;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53A-12-103 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99; and

(ii) Rule R277-487; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700 and R277-404.

(18) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only licensed Utah educators as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Sections 53A-15-1503 and 53A-15-1504 prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-510, Educator Licensing - Highly Qualified Assignment;

(e) shall agree to administer and have the capacity to carry out statewide assessments, including proctoring statewide assessments, consistent with Section 53A-15-1210(2) and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53A-15-1206 and 53A-15-1206.5.

(19) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, and other additional data consistent with Board directives and procedures and as requested.

(20) A provider shall post all required information online on the provider's individual website including required assessment and accountability information.

R277-726-8. Services to Students with Disabilities Participating in the Program.

(1)(a) If a student requests services related to a Section 504 accommodation under Section 504 of the Rehabilitation Act of 1973, a provider shall:

(i) except as provided in Subsection (1)(b), prepare a Section 504 plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student described in Subsection (1)(a) to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

(3) If a home or private school student participating in the program qualifies to receive special education services under the IDEA, the home or private school student:

(a) may waive the student's right to receive the special education services; or

(b) subject to the requirements of Subsection (4), enroll in the home or private school student's resident school for the purpose of receiving special education services.

(4) If a home or private school student requests to receive special education services as described in Subsection (3)(b):

(a) the home or private school student's resident school shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (4)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) claim the student in the resident school's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (4)(a)(i).

R277-726-9. Home and Private School Appropriation.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) 50% of the total appropriation for home school students; and

(b) 50% of the total appropriation for private school students.

(2) The Superintendent shall receive and accept enrollment requests on a first come, first served basis until all available funds are obligated.

(3) If home school or private school student funds remain by March 1, the Superintendent may release the funds for any pending enrollment requests.

R277-726-10. Other Information.

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

KEY: statewide online education program

December 8, 2016	**Art X Sec 3**
Notice of Continuation December 15, 2015	**53A-15-1210**
	53A-15-1213
	53A-1-401

R277. Education, Administration. **53A-1-401(3)**
R277-915. Work-based Learning Programs for Interns.
R277-915-1. Definitions.

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

B. "Intern" means a student enrolled in a school-sponsored work experience and career exploration program under Section 53A-29-102 involving both classroom instruction and work experience with a cooperating employer, for which the student receives no compensation.

C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

D. "School-based enterprise" means businesses set up and run by supervised students learning to apply "practical" skills in the production of goods or services for sale or use by others.

E. "Work site" or "workplace" means the actual location where employment occurs for particular occupation(s), or an environment that simulates all aspects/elements of that employment, for instance school-based enterprises.

F. "Work-based learning" means activities that involve actual work experience or connect classroom learning to work.

R277-915-2. 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-29-102 which provides that the Board shall provide rules to schools wishing to offer and operate internships in connection with work experience and career exploration programs; 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 direction to LEAs as they provide work-based learning programs and to establish criteria to be included in those polices.

R277-915-3. Mandatory LEA Policy.

A. Each LEA that has work-based learning programs that include assigning students to act as interns at off-campus sites or on-campus simulations shall establish a policy which provides procedures and criteria for at least the following issues:

(1) training for student interns, student intern supervisors, and cooperating employers regarding health hazards and safety procedures in the workplace;

(2) standards and procedures for approval of off-campus work sites;

(3) transportation options for students to and from the work site;

(4) appropriate supervision by employers at the work site;

(5) adequate insurance coverage provided and identified either by the student, the program or the LEA;

(6) appropriate supervision and evaluation of the student by the LEA; and

(7) appropriate involvement and approval by the student's parents in the work-based intern program.

R277-915-4. Consistency with Law and State and LEA Board Rules and Policies.

A. The work-based intern experience shall be consistent with the provisions of the Fair Labor Standards Act, Part 570, Subpart E, 29 C.F.R.

B. Work-based intern programs shall operate consistently with Board rules and LEA polices including student transportation, credit toward graduation, attendance, and fee waivers.

KEY: public schools, intern program*
March 12, 2012 **Art X Sec 3**
Notice of Continuation December 14, 2016 **53A-29-102**

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on December 7, 2016, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII, Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
December 8, 2016 19-2-104
Notice of Continuation February 1, 2012

R311. Environmental Quality, Environmental Response and Remediation.
R311-200. Underground Storage Tanks: Definitions.
R311-200-1. Definitions.

(a) Refer to Section 19-6-402 for definitions not found in this rule.

(b) For purposes of underground storage tank rules:

(1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

(2) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

(3) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.

(4) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.

(5) "Certificate" means a document that evidences certification.

(6) "Certification" means approval by the Director or the Board to engage in the activity applied for by the individual.

(7) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2(d).

(8) "Change-in-service" means the continued use of an UST to store a non-regulated substance.

(9) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.

(10) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil over-excavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.

(11) "Consultant" is a person who is a certified underground storage tank consultant according to Subsection 19-6-402(6).

(12) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

(13) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Director following the criteria in R311-211.

(14) "Department" means the Utah Department of Environmental Quality.

(15) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).

(16) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

(17) "EPA" means the United States Environmental Protection Agency.

(18) "Expeditiously disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Director.

(19) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

(20) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.

(21) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(22) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(23) "Injury or Damages from a Release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in R311-211-6(a).

(24) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Director.

(25) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(26) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

(27) "No Further Action determination" means that the Director has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

(28) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(29) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(30) "Owners and operators" means either an owner or operator, or both owner and operator.

(31) "Over-excavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(32) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Rule R311-202.

(33) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).

(34) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(35) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(36) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as

a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(37) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(38) "Registration fee" means underground storage tank registration fee.

(39) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(40) "Secondary Containment", for the purposes of R311-203-6, means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(41) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(42) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(43) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(44) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(45) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Director.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Director.

(46) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(47) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(48) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(49) "Third-party Class B operator" is any individual who is not the facility owner/operator or an employee of the owner/operator and who, by contract, provides the services outlined in R311-201-12(e).

(50) "Under-Dispenser Containment", for the purposes of R311-203-6, means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(51) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(52) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(53) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations as authorized in Subsection 19-6-404(2)(c).

(54) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

(A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(B) vent and product piping assembly;

(C) cathodic protection installation, service, and repair;

(D) internal lining;

(E) secondary containment construction; and

(F) UST repair and service.

(55) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(56) "UST installer" means an individual who engages in underground storage tank installation.

(57) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(58) "UST remover" means an individual who engages in underground storage tank removal.

(59) "UST tester" means an individual who engages in UST testing.

(60)(A) "UST testing" means

(i) a testing method which can detect leaks in an underground storage tank system, or

(ii) testing for compliance with corrosion protection requirements, or

(iii) testing or inspection for proper operation of overfill prevention devices and electronic or mechanical leak detection components.

(B) Testing methods must meet applicable performance standards:

(i) 40 CFR 280.40(a)(4), 280.43(c), and 280.44(b) for tank and product piping tightness testing,

(ii) 40 CFR 280.35(a)(1)(ii) for testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping,

(iii) 280.31(b) for cathodic protection testing,

(iv) 280.35(a)(2) for overfill device inspection,

(v) 280.40(a)(3) for testing of mechanical and electronic release detection components, and

(vi) R311-206-11(c)(2)(C) for tank and piping secondary containment testing under R311-206-11.

KEY: petroleum, underground storage tanks
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R311. Environmental Quality, Environmental Response and Remediation.
R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.
R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. Certification Requirement.

(a) Certified UST Consultant. No person shall provide or contract to provide information, opinions, or advice relating to UST release management, abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged, without having certification to conduct these activities, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b). The Certified UST Consultant shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall make pertinent project management decisions and be responsible for ensuring that all aspects of UST-related work are performed in an appropriate manner, and all related documentation for work performed submitted to the Director shall contain the Certified UST Consultant's signature. Any release abatement, investigation, and corrective action work performed by a person who is not certified or who is not working under the direct supervision of a Certified UST Consultant, and is performed for compliance with Utah underground storage tank release-related rules, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b), may be rejected by the Director.

(b) UST Inspector. No person shall conduct underground storage tank inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct these activities.

(c) UST tester.

(1) Except as outlined in Subsections (c)(2) and (c)(3), no person shall conduct UST testing without having certification to conduct such activities. Except as outlined in Subsection (c)(2) and (c)(3), no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201.

(2) An individual certified under Rule R311-201 as an installer may:

(A) perform a test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used;

(B) perform an overfill device inspection to meet the requirements of 40 CFR 280.35(a)(2);

(C) perform a test for proper operation of release detection components to meet the requirements of 40 CFR 280.40(a)(3)(i),(ii), (iv), and (v); and

(D) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11(e)(2), if no equipment that requires training by the manufacturer is used.

(3) An UST owner or operator may:

(A) perform a hydrostatic test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used, and

(B) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11(e)(2), if no equipment that requires training by the manufacturer is used.

(4) Certification by the Director under this Rule shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by training determined by the Director to be equivalent to the manufacturer training, for these types of testing:

(A) tank, line, and leak detector testing;

(B) interstitial tests of tanks and piping; and

(C) spill prevention device and containment sump testing, if equipment that requires training by the manufacturer is used.

(5) The Director may issue a limited certification restricting the type of UST testing the applicant can perform.

(d) Groundwater and soil sampler. No person shall conduct groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. No owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.

(e) UST Installer. No person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. No owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Director may issue a limited certification restricting the type of UST installation the applicant can perform.

(f) UST Remover. No person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. No owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.

R311-201-3. Application for Certification.

(a) Any individual may apply for certification by paying any applicable fees and by submitting an application to the Director to demonstrate that the applicant

(1) meets applicable eligibility requirements specified in Section R311-201-4 and

(2) will maintain the applicable performance standards specified in Section R311-201-6 after receiving a certificate.

(b) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Director for determination of eligibility for certification. If the Director determines that the applicant meets the applicable eligibility requirements described in Section R311-201-4 and meets the standards described in Section R311-201-6, the Director shall issue to the applicant a certificate.

(c) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Certificates shall be subject to periodic renewal pursuant to Section R311-201-5.

R311-201-4. Eligibility for Certification.

(a) Certified UST Consultant.

(1) Training. For initial and renewal certification, an applicant must meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law, and within a six-month period prior to application must complete an approved training course or equivalent in a program approved by the Director to provide training to include the following areas: state and federal statutes,

rules and regulations, groundwater and soil sampling, and other applicable and related Department of Environmental Quality policies.

(2) Experience. Each applicant must provide with the application a signed statement or other evidence demonstrating three years, within the past seven years, of appropriately related experience in underground storage tank release abatement, investigation, and corrective action, or an equivalent combination of appropriate education and experience, as determined by the Director.

(3) Education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(A) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education/experience as determined by the Director;

(B) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act or equivalent certification as determined by the Director; or

(C) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the Director.

(4) Initial Certification Examination. Each applicant who is not certified pursuant to R311-201-3 must successfully pass an initial certification examination or equivalent administered under the direction of the Director. The Director shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-4(a)(1).

(5) Renewal Certification Examination. Certified UST Consultants seeking to renew their certification pursuant to R311-201-5 must successfully pass a renewal certification examination or equivalent administered under the direction of the Director. The Director shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-4(a)(1). The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) Examination for Revoked or Expired Certification. Any applicant who is not a Certified UST Consultant on the date the renewal certification examination is given, because the consultant's prior UST Consultant certification was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under R311-201-4(a)(4).

(b) UST Inspector.

(1) Training. For initial certification, an applicant must have successfully completed an underground storage tank inspector training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: corrosion, geology, hydrology, tank handling, tank testing, product piping testing, disposal, safety, sampling methodology, state site inspection protocol, state and federal statutes, rules and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(b)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(c) UST Tester.

(1) Financial Assurance. An applicant or applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST testing and which, in combination, represent an unencumbered value of the largest UST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or $50,000, whichever is greater. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the certification application.

(2) Training.

(A) For initial certification, an applicant shall complete underground storage tank testers training within the six month period prior to application, in a program approved by the Director to provide training to include applicable and related areas of state and federal statutes, rules, and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.

(B) For initial certification to perform the types of testing specified in R311-201-2(c)(3), an applicant must have successfully passed a training course conducted by the manufacturer of the UST testing equipment that he will be using, or a training course determined by the Director to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. An applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the UST testing equipment that he will be using, or training as determined by the Director to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. For renewal certification, refresher training or equivalent must be completed within one year prior to the expiration date of the certificate.

(C) Cathodic protection testing. For initial and renewal of certification, the applicant shall provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12. The applicant shall provide documentation of training with the application.

(3) Performance Standards of Equipment. An applicant shall submit documentation that demonstrates the UST testing equipment used by the applicant meets the performance standards specified in R311-200-1(b)(60)(B). This documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the Director. The documentation shall be submitted at the time of application for certification.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(c)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(d) Groundwater and soil sampler.

(1) Training. For initial certification an applicant shall successfully complete an underground storage tank groundwater and soil sampler training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations. Renewal certification training will be determined

by the Director. The applicant shall provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-4(d)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(e) UST Installer.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank installation and which, in combination, represents an unencumbered value of not less than the largest underground storage tank installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or $250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank installer training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Director, and shall include instruction in the following areas: tank installation, pre-installation tank testing, product piping testing, excavation, anchoring, backfilling, secondary containment, leak detection methods, piping, electrical, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) UST Remover.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank removal and which, in combination, represents an unencumbered value of not less than the largest underground storage tank removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or $250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank remover approved training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Director and shall include instruction in the following areas: tank removal, tank removal safety practices, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank removals.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(f)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

R311-201-5. Renewal.

(a) A certificate holder may apply for certificate renewal not more than six months prior to the expiration date of the certificate by:

(1) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in R311-201-4 and meets the applicable performance standards specified in R311-201-6;

(2) paying any applicable fees, and

(3) passing a certification renewal examination.

(b) If the Director determines that the applicant meets the applicable eligibility requirements of R311-201-4 and the applicable performance standards of R311-201-6, the Director shall reissue the certificate to the applicant.

(c) Renewal certificates shall be issued for a period equal to the initial certification period, and shall be subject to inactivation under R311-201-8 and revocation under R311-201-9.

(d) Any applicant who has a certification which has been revoked or expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and certification examination requirements for initial certification under R311-201-4 for the applicable certificate before receiving the renewal certification, except as provided in R311-201-4(a)(6) for certified UST consultants.

R311-201-6. Standards of Performance.

(a) Individuals who are certified in accordance with Rule R311-201 shall:

(1) display the certificate upon request;

(2) comply with all local, state, and federal laws, rules, and regulations regarding the UST activity for which certification is granted;

(3) report the discovery of any release caused by or encountered in the course of performing the UST activity for which certification is granted to the Director, the local health district, and the local public safety office within twenty-four hours. Certified UST consultants and certified groundwater and soil samplers shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah UST rules, or report the results indicating that a release may have occurred, to the Director, the local health district, and the local public safety office within twenty-four hours.

(4) not participate in fraudulent, unethical, deceitful, or dishonest activity with respect to a certificate application or performance of work for which certification is granted; and

(5) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(b) Certified individuals shall, in addition to meeting the performance standards in R311-201-6(a), observe the following:

(1) Certified UST Consultant. An individual who provides UST consulting services in the State of Utah:

(A) shall provide, or shall associate appropriate personnel

in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;

(B) shall perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;

(C) shall perform work and submit documentation in a timely manner;

(D) shall review and certify by signature any documentation submitted to the Director in accordance with UST release-related compliance; and

(E) shall ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a Certified UST Consultant;

(2) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:

(A) shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Director.

(3) UST Tester. An individual who performs UST testing in the State of Utah:

(A) shall perform all work in a manner that there is no release of the contents of the tank;

(B) shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person; and

(C) shall perform work in a manner that the integrity of the underground storage tank system is maintained.

(4) UST Installer. An individual who performs underground storage tank installation in the State of Utah:

(A) shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment, including pre-installation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service, or repair, vent and product piping assembly, fill tube attachment, installation of tank manholes, pump installation, secondary containment construction, and UST repair, shall be supervised by a certified person; and

(B) shall notify the Director as required by R311-203-3(a) before installing or upgrading an UST.

(5) UST Remover. An individual who performs underground storage tank removal in the State of Utah:

(A) shall assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes removal of soil adjacent to the tank, disassembly of pipe, final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site shall be supervised by a certified person; and

(B) shall not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(b).

R311-201-7. Denial of Certification and Appeal of Denial.

Any individual whose application or renewal application for certification or certification renewal is denied shall be provided with a written documentation by the Director specifying the reason or reasons for denial. An applicant may appeal the determination using the procedures specified in Section 19-1-301.5, et seq., and Rule R305-7.

R311-201-8. Inactivation of Certification.

If an applicant was certified based upon his employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer. If the employer loses his financial assurance or the applicant leaves the employer, his certificate shall automatically be deemed inactive and he shall no longer be certified for purposes of this Rule. Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees. Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

R311-201-9. Revocation of Certification.

Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked. Procedures for revocation are specified in Rule R305-7.

R311-201-10. Reciprocity.

If the Director determines that another state's certification program is equivalent to the certification program provided in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, he may issue a Utah certificate. The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Subsection R311-201-3(c), as appropriate, whichever is first.

R311-201-12. UST Operator Training and Registration.

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Director to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) New Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(d)(2). The Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system.

(1) The Class A operator shall:

(A) have a general knowledge of UST systems;

(B) ensure that UST records are properly maintained according to 40 CFR 280;

(C) ensure that yearly UST fees are paid;

(D) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(E) make financial responsibility documents available to the Director as required; and

(F) ensure that Class B and Class C operators are trained and registered.

(2) An owner or operator may designate a third-party Class B operator as a Class A operator if:

(A) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to

protect a security interest in that property and has not operated the USTs at the facility;

(B) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and

(C) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Section R311-203-7;

(2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(3) ensure that the status of the UST system is monitored for alarms and unusual operating conditions that may indicate a release;

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

(5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(6) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;

(7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

(f) Any individual providing services as a third-party Class B operator shall be trained and registered in accordance with Subsection R311-201-12(h) and shall:

(1) be certified in accordance with Rule R311-201 as:

(A) a UST Tester, or

(B) a UST installer as either a general installer or service/repair technician, or

(2) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of $250,000 minimum per occurrence.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

(1) be present at the facility at all times during normal operating hours;

(2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(3) properly respond to alarms, spills, and overfills;

(4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and

(5) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(h) Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Director, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overfill prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Director. The Director shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(h)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Director, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Director. The Director shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Director, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or become inactive if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

(i) submitting a completed application form;

(ii) paying any applicable fees; and

(iii) documenting successful completion of any re-training required by Subsection R311-201-12(i).

(B) If the Director determines that the operator meets all the requirements for registration, the Director shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(h)(1) before receiving the renewal registration.

(i) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility; or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection

Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Section R311-203-7; or

(C) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Director.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Director within 30 days of the re-training. If the documentation is not received by the Director within 120 days of the date of the determination of non-compliance, the Class A or B operator's registration shall lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(h)(1) and (2).

(5) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(i)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(i)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(j) Reciprocity.

(1) If the Director determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(h)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(h)(2)(D).

KEY: hazardous substances, administrative proceedings, underground storage tanks, revocation procedures

January 1, 2017 **19-1-301**
Notice of Continuation April 10, 2012 **19-6-105**
19-6-402
19-6-403
63G-4-102
63G-4-201 through 205
63G-4-503

R311. Environmental Quality, Environmental Response and Remediation.
R311-202. Federal Underground Storage Tank Regulations.
R311-202-1. Incorporation by Reference.

This rule incorporates by reference 40 CFR Part 280, the federal underground storage tank regulations, in effect as of October 13, 2015, except that:

(a) 40 CFR 280 Subpart J is not incorporated by reference;

(b) the definitions of Class A operator, Class B operator, Class C operator, and Training program in 40 CFR 280.12 are not incorporated by reference;

(c) The date October 13, 2015 in 280.10(a)(1)(ii), 280.10(a)(1)(iii), 280.20(c)(3), 280.35(b)(1), 280.35(b)(2), 280.42(a) note, 280.42(e), 280.45(a), 280.251(a)(1), 280.251(a)(2), 280.251(b), 280.252(b), 280.252(e), 40 CFR Part 280 appendix 1, and 40 CFR Part 280 appendix 2 is, in each instance, changed to January 1, 2017; and

(d) The date April 11, 2016 in 280.20, 280.20(f),280.41(a)(1), 280.41(a)(2), 280.41(b)(1), and 280.41(b)(2) is, in each instance, changed to January 1, 2017.

KEY: hazardous substances, petroleum, underground storage tanks
January 1, 2017 19-6-105
Notice of Continuation April 10, 2012 19-6-403

R311. Environmental Quality, Environmental Response and Remediation.
R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.
R311-206-1. Definitions.

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks shall:

(1) meet all requirements for participation in the Environmental Assurance Program, or

(2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) Owners or operators shall declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of Subsection 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(a) The Director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(1) the owner or operator has a certificate of registration;

(2) the tank is substantially in compliance with all state and federal statutes, rules and regulations;

(3) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(4) the owner or operator has submitted a letter to the Director stating that based on customary business inventory practices standards there has been no release from the tank;

(5) the owner or operator has submitted a completed application according to a form provided and approved by the Director, and has declared the financial assurance mechanism that will be used;

(6) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees;

(7) the owner or operator has submitted an as-built drawing that meets the requirements of R311-200-1(b)(2); and

(8) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

R311-206-4. Requirements for Environmental Assurance Program Participants.

(a) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the Director as a specific number of gallons, based on the throughput for the previous calendar year.

(b) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the Director, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(c) In accordance with Subsection 19-6-411(6), the Director may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director.

(d) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(e) Auditing of UST facility throughput records.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The Director may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Director.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Director.

(D) All costs of an independent audit shall be paid by the owner or operator.

(f) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of $10,000 upon request and to the satisfaction of the Director. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the administrative cost is covered by the PST fund fee. However, the Director may require the owner or operator to submit an independent audit to demonstrate net worth for self-insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(e)(2).

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent reviews of financial assurance documents shall be due on July 1 of the fiscal year for which the review is required.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third

party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.102 and 280.104-280.107. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the Director, and an additional processing fee shall be paid in circumstances as determined by the Director.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Director as follows:

(1) Owners and operators using the financial test of self-insurance shall submit the "Letter from Chief Financial Officer" to the Director within the maximum 120 day period specified in 40 CFR 280.95.

(2) Owners and Operators using insurance and risk retention group coverage for financial assurance shall submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Director within 30 days of acceptance of such policy by the insurer or risk retention group.

(A) If the insurance policy or risk retention group coverage is cancelled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Director as well as the insured.

(B) The insurer shall have a rating of A- or greater by A.M. Best Co.

(3) Owners and operators using an irrevocable letter of credit shall submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Director within 30 days of issuance from the issuing institution.

(4) Owners and operators using a fully funded trust fund for financial assurance shall submit proof of the trust fund and formal certification of acknowledgement to the Director within 30 days after implementation of the trust fund.

(5) Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period specified in 40 CFR 280.95.

(6) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance.

(7) Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(8) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Director within 120 days of the end of the owner/operator's or guarantor's fiscal year.

(d) The Director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Director within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Director may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Director.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Director shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Director.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);

(2) meeting applicable requirements of the Utah State Fire Code adopted pursuant to Section 15A-1-403;

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(a) The Director shall revoke a certificate of compliance or registration if he determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2), Subsection 19-6-428(3), and Section R311-206-3.

(c) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of

compliance.

(f) In accordance with Section 19-6-414, the Director may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

R311-206-8. Delivery Prohibition.

(a) In accordance with Subsection 19-6-411(7), the Director shall authorize the placement of a delivery prohibition tag identifying a tank:

(1) for which the certificate of compliance has been revoked in accordance with Section 19-6-414, or

(2) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5), or

(3) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(a)(4), or

(4) that is a new installation, and has not been issued a certificate of compliance.

(b) In accordance with Subsection 19-6-403(1)(b)(i), the Director shall authorize the placement of a delivery prohibition tag to be placed on the tank as soon as practicable after the determination is made that a tank:

(1) does not have spill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or

(2) does not have overfill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or

(3) does not have equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D, or

(4) does not have equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(c) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(d) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under R311-206-8(e).

(e) The Director may issue written approval for a delivery of petroleum to:

(1) provide ballast for a new tank during installation, or

(2) allow for the tank tightness test required under Section 19-6-413.

(f) The delivery prohibition tag shall remain in place until the Director issues:

(1) for tanks that have a tag in place in accordance with Subsection R311-206-8(a):

(A) a new certificate of compliance for the tank, and

(B) written authorization to remove the delivery prohibition tag, or

(2) for tanks that have a tag in place in accordance with Subsection R311-206-8(b):

(A) written authorization to remove the delivery prohibition tag.

(g) If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(f)(1)(B) or Subsection R311-206-8(f)(2)(A), the UST owner or operator shall be subject to:

(1) a re-inspection and any applicable fees, and

(2) placement of a new delivery prohibition tag on the tank.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(a) Owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:

(1) permanently closing tanks as outlined in 40 CFR 280, subpart G, Rule R311-204, and Rule R311-205, or

(2) meeting the following requirements:

(A) demonstrating compliance with Section R311-206-5, and

(B) notifying the Director in writing at least 30 days before the date of cessation of participation in the program, and specifying the date of cessation.

(i) The Director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under R311-206-5 for other USTs owned or operated by the owner or operator.

(ii) The date of cessation of participation in the program may occur after the date designated in Subsection R311-206-9(a)(2)(B) if the owner or operator does not document compliance with R311-206-5 by the date originally designated.

(b) The fund will not give pro-rata refunds.

(c) For tanks being removed voluntarily from the program, the date of cessation of participation in the program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.

(a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:

(1) notify the Director of the intent to participate in the program;

(2) comply with the requirements of Subsection 19-6-428(3), and

(3) meet the requirements of Subsection R311-206-3(a) to qualify for a new certificate of compliance.

(b) In accordance with Subsection 19-6-428(3)(b), the Director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:

(1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.

(2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;

(ii) the most recent simulated leak test for all automatic line leak detectors;

(iii) cathodic protection tests, if applicable, and

(iv) internal lining inspections, if applicable.

(3) The period of non-participation in the Program is less than six months, or the UST is less than ten years old.

R311-206-11. Environmental Assurance Fee Rebate Program.

(a) To meet the requirements of Subsection 19-6-410.5(5)(d), each UST Facility participating in the Program shall receive a risk value calculated according to "Environmental Assurance Program Risk Factor Table and Calculation", which is hereby incorporated by reference. The table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(b) The risk value for each facility participating in the Environmental Assurance Program shall be:

(1) calculated on a facility basis;

(2) valid for the calendar year;

(3) based on the facility characteristics as of December 15 of the prior calendar year; and

(4) determined, at sites with mixed equipment, by considering the highest risk-valued UST system component for each risk factor.

(c) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

(1) meet the requirements for secondary containment in 40 CFR 280.20, and

(2) meet one of the following:

(A) use an interstitial sensor and documentation of monthly interstitial monitoring, or

(B) documentation of monthly visual checks of a brine-filled interstitial space, or

(C) have the interstitial space tested at least once every three years and be documented to be tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

(i) requirements developed by the manufacturer, or

(ii) a Code of Practice developed by a nationally recognized association or independent testing laboratory.

(d) To qualify as secondarily contained for purposes of risk calculation, piping shall:

(1) meet the requirements for secondary containment outlined in 40 CFR 280.20, and

(2) meet one of the following:

(A) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or

(B) use an interstitial monitoring method not listed in Subsection (d)(2)(A), and the integrity of the interstitial space is ensured at least once every three years by using vacuum, pressure, or liquid test in accordance with criteria listed in Subsection (c)(2)(C).

(e) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps and under-dispenser containment shall:

(1) be double-walled with monthly documentation of monitoring of the space between the walls, or

(2) be tested at least once every three years to show the piping containment sump or under-dispenser containment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

(A) requirements developed by the manufacturer, or

(B) a code of practice developed by a nationally recognized association or independent testing laboratory.

(f) Each facility that participates in the Environmental Assurance Program may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table", which is hereby incorporated by reference. The table, dated June 2, 2014, lists risk tiers and the rebate for each tier.

(g) A facility that begins participation in the Environmental Assurance Program after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the Program.

KEY: hazardous substances, petroleum, underground storage tanks

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Notice of Continuation April 10, 2012	**19-6-403**
	19-6-410.5
	19-6-428

R311. Environmental Quality, Environmental Response and Remediation.
R311-212. Administration of the Petroleum Storage Tank Loan Program.
R311-212-1. Definitions.

Definitions are found in Rule R311-200.

R311-212-2. Declaration of Loan Application Periods, and Loan Application Submittal.

(a) Application for a loan shall be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-409(9). Loan applications shall be accepted during application periods designated by the Director.

(b) At least one application period shall be designated each calendar year if, on January 1,:

(1) the current balance due for all outstanding loans is less than twenty-five per cent of the cash balance of the Petroleum Storage Tank Trust Fund, and

(2) the cash balance of the Petroleum Storage Tank Trust Fund exceeds $10,000,000.

(c) If the requirements of Subsections R311-212-2(b)(1) and (b)(2) are not met on January 1, but are met at a later time in the calendar year, the Director may designate an application period.

(d) An open application period will close if:

(1) the current balance due for all outstanding loans exceeds twenty-five per cent of the cash balance of the Petroleum Storage Tank Trust Fund, or

(2) the cash balance of the Petroleum Storage Tank Trust Fund is less than $10,000,000.

(e) If an open application period closes as required by Subsection R311-212-2(d), loan applications currently under review when the application period closes may be renewed when a new application period opens, unless the applicant must re-apply as required by Subsection R311-212-5(a).

(f) Applications must be received by the Director by 5:00 p.m. on the last day of the application period.

(g) Loan applications received outside the application period shall be invalid.

R311-212-3. Eligibility Review.

(a) The Director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-409(5), 19-6-409(6), 19-6-409(7), and 19-6-409(8).

(b) To meet the eligibility requirements of 19-6-409(6) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-409(6) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-409(5), the loan request must be for the purpose of:

(1) Upgrading petroleum USTs;

(2) replacing USTs; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6.

R311-212-4. Prioritization of Loan Applications.

(a) When determined by the Director to be necessary, all applications received during a designated application period shall be prioritized by total points assigned. Ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(1) The applicant has less than $1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(2) The applicant's income is derived solely from operations at UST facilities.

(3) The applicant owns or operates no more than two facilities.

(4) The facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(5) There are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(6) Loan proceeds will be used solely for replacing or upgrading USTs.

(7) All USTs at the facility are greater than 15 years old.

(b) One point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(c) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the Director by any other method.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of applications which have not been reviewed terminates. An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-409(5) through (8), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

R311-212-5. Loan Application Review.

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Director may require payment of costs in advance. The Director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) The applicant must close the loan within 30 days after

the Director conveys the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Director if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(a) When an applicant applies for a loan of greater than $30,000, the applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(b) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

(1) a current written appraisal, performed by a State of Utah certified appraiser;

(2) a current county tax assessment notice, or

(3) other documentation acceptable to the Director.

(c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Director by a title company or appropriate professional person approved by the Director.

(d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(f) The applicant must provide a complete financial statement with cash flow projections for debt service.

(g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

(i) If a loan is made without security, the maximum loan repayment period shall be seven years.

R311-212-7. Procedure for Making Loans.

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Director.

(b) The Director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins. The initial disbursement shall be for the lesser of 40 per cent of the approved loan amount or the amount required by the borrower's contractor as an initial payment before work is done. Disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and all paperwork and notifications have been received by the Director.

(1) If an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the Director, following the initial disbursement. Disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the Director, following the initial disbursement.

(2) If work is not initiated or completed within the time periods established in Subsection R311-212-7(b)(1), the loan balance shall be paid within 30 days of notice provided by the Director.

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

R311-212-8. Servicing the Loans.

(a) The Director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-409(8)(b)(ii). Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

(b) The initial installment payment shall be due on a date established by the Director. Subsequent installment payments shall be due on the first day of each month. A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(c) The Director shall apply loan payments received first to penalty, next to interest and then to principal.

(d) Loan payments may be made in advance, and the remaining principal balance of the loan may be paid in full at any time without penalty.

(e) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(f) The penalty for late loan payments shall be 10 percent of the payment due. The penalty shall be assessed and payable on payments received by the Director more than five days after the due date. A penalty shall be assessed only once on a given late payment. Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Director by methods other than the U.S. Postal Service. If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(g) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(h) Releases of the Director's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

(a) Loans may be considered in default when two consecutive payments are past due by 30 days or more, when the applicant's ability to receive payments for claims against the fund lapses, or if the certificate of compliance lapses or is revoked. Lapsing under Subsection R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

(b) The Director may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(c) The Director need not give notice of default prior to declaring the full amount due and payable.

(d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Rule R311-212, and shall be used by the Director for making loans.

(1) Loan Application version 7/14/16

(2) Balance Sheet version 7/29/14
(3) Loan Agreement version 7/29/14
(4) Corporate Authorization version 7/29/14
(5) Promissory Note version 7/29/14
(6) Extension and Modification of Promissory Note Agreement version 7/29/14
(7) Security Agreement version 7/29/14
(8) Hypothecation Agreement version 7/29/14
(9) General Pledge Agreement version 7/29/14
(10) Assignment version 7/29/14
(11) Assignment of Account version 7/29/14
(12) Trust Deed version 7/29/14
(13) Trust Deed Note version 7/29/14
(14) Extension and Modification of Trust Deed Note Agreement version 7/29/14

(b) The Director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

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	19-6-409

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
R315-302-1. Location Standards for Disposal Facilities.

(1) Applicability.

(a) These standards apply to each new solid waste disposal facility and any existing solid waste disposal facility seeking facility expansion, including:

(i) Class I, II, and V Landfills;

(ii) Class III Landfills as specified in Rule R315-304;

(iii) Class IV and VI Landfills as specified in Rule R315-305;

(iv) piles that are to be closed as landfills; and

(v) Incinerators as specified in Rule R315-306.

(b) These standards, except for Subsection R315-302-1(2)(f) or unless otherwise noted, do not apply to:

(i) an existing facility;

(ii) a transfer station or a drop box facility;

(iii) a pile used for storage;

(iv) composting or utilization of sludge or other solid waste on land; or

(v) hazardous waste disposal sites regulated by Rules R315-260 through 266, 268, 270, 273 and Rule R315-101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards.

(a) Land Use Compatibility. No new facility shall be located within:

(i) one thousand feet of a:

(A) national, state, county, or city park, monument, or recreation area;

(B) designated wilderness or wilderness study area;

(C) wild and scenic river area; or

(D) stream, lake, or reservoir;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) farmland classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agriculture Soil Conservation Service under the Prime Farmland Protection Act;

(iv) one-fourth mile of:

(A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(v) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions. Every new and existing disposal facility is subject to this requirement. If a new landfill or a lateral expansion of an existing landfill is located within six miles of an airport runway end, the owner or operator must notify the affected airport and the Federal Aviation Administration; or

(vi) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology.

(i) No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features which could compromise the structural integrity of the facility.

(ii) Holocene Fault Areas. A new facility or a lateral expansions of an existing facility shall not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the Director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(iii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility shall not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the Director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iv) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area must demonstrate to the satisfaction of the Director that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the Director that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the Director that:

(i) where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or section 307 of the Clean Water Act;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(C) the volume and chemical nature of the waste managed in the unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined

by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Ground Water.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) where the bottom of the lowest liner is less than five feet above the historical high level of ground water; or

(B) for a landfill that is not required to install a liner, the lowest level of waste must be at least ten feet above the historical high level of ground water.

(C) If the aquifer beneath a landfill contains ground water which has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the ground water.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless all units of the proposed facility are constructed with a composite liner or other equivalent design approved by the Director:

(A) a new facility located above any aquifer containing ground water which has a TDS content below 1,000 mg/l which does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is greater than 100 feet; or

(B) a new facility located above any aquifer containing ground water which has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days ground water travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Director, of hydraulic conductivity and other information necessary to determine the 250 days ground water travel distance.

(vi) Ground Water Alternative.

(A) Subject to the ground water performance standard stated in Subsection R315-303-2(1), if a solid waste disposal facility is to be located over an area where the ground water has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to ground water, or where there is a natural impermeable barrier above the ground water, or where there is no ground water, the Director may approve, on a site specific basis, an alternative ground water monitoring system at the facility or may wave the ground water monitoring requirement. If ground water monitoring is waved the owner or operator shall make the demonstration stated in Subsection R315-308-1(3).

(B) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the ground water quality standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the Director if the operation of the facility impacts ground water.

(f) Historic preservation survey requirement.

(i) Each new facility or expansion of an existing facility shall:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(ii) Each existing facility shall, for all areas of the site that have not been disturbed:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(3) Exemptions. Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of Section R315-302-1 may be granted by the Director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(a) No exemption may be granted without application to the Director.

(b) If an exemption is granted, a facility may be required to have a more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) All applications for exemptions shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

R315-302-2. General Facility Requirements.

(1) Applicability.

(a) Each new and existing solid waste facility for which a permit is required by Section R315-310-1, shall meet the applicable requirements of Section R315-302-2 or portions of Section R315-302-2 as required by Rules R315-304, R315-305, R315-306, R315-307, R315-312, R315-313, or R315-314.

(b) Any facility which stores waste in piles that is subject to the requirements of Rule R315-314 shall meet the applicable requirements of Section R315-302-2.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan of operation, to the Director, that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(ii) Prior to the acceptance of waste or recyclable material or beginning operations at the facility, the owner or operator of a recycling or composting facility must receive notice from the Director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-312.

(d) Any transfer station subject to the standards of Rule R315-313 shall submit a plan of operation to the Director that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(ii) Prior to the acceptance of waste or beginning operations at the facility, the owner or operator of a transfer station facility must receive notice from the Director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-313.

(e) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(f) A solid waste incinerator facility that meets the quantity limitation of Subsection R315-306-3(1)(b) shall meet the reporting requirements of Subsection R315-302-2(4).

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the Director. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the Director or his authorized representative. The facility must be operated in accordance with the plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility permits will be reviewed by the Director no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the permit;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if ground water is contaminated;

(f) contingency plans for other releases, e.g. release of explosive gases or failure of run-off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a plan to control wind-blown litter that includes equipment and methods to contain litter, including a schedule and methods to collect scattered litter in a timely manner;

(i) a description of maintenance of installed equipment including leachate and gas collection systems, and ground water monitoring systems;

(j) procedures for excluding the receipt of prohibited hazardous waste or prohibited waste containing PCBs;

(k) procedures for controlling disease vectors;

(l) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed in case of equipment breakdown;

(m) closure and post-closure care plans;

(n) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(o) a landfill operations training plan for site operators; and

(p) other information pertaining to the plan of operation as required by the Director.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the Director, the following permanent records:

(a) a daily operating record, to be completed at the end of each day of operation, that shall contain:

(i) the weights, in tons, or volumes, in cubic yards, of solid waste received each day, number of vehicles entering, and if available, the type of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of ground water and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by Subsection R315-303-3(2)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and (7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the Director.

(4) Reporting.

(a) Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the Director by March 1 of each year for the most recent calendar year or fiscal year of facility operation.

(b) The annual report shall cover facility activities during the previous year and must include, at a minimum, the following information:

(i) name and address of the facility;

(ii) calendar year covered by the report;

(iii) annual quantity, in tons, of solid waste received;

(iv) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(v) results of ground water monitoring and gas monitoring; and

(vi) training programs or procedures completed.

(c) Since the amount of waste received must be reported in tons, the following conversion factors shall be used for waste received that is not weighted on scales.

(i) Municipal solid waste:

(A) Uncompacted - 0.15 tons per cubic yard; and

(B) Compacted (delivered in a compaction vehicle) - 0.30 tons per cubic yard.

(ii) Construction/demolition waste - 0.50 tons per cubic yard.

(iii) Municipal incinerator ash - 0.75 tons per cubic yard.

(iv) Other ash - 1.10 tons per cubic yard.

(v) Waste delivered by a resident in a pickup truck or a single axle trailer - 0.25 tons per vehicle.

(vi) Industrial waste - a reasonable conversion factor, based on site specific data, developed by the owner or operator of the facility.

(d) If an owner or operator of a municipal landfill or a construction/demolition landfill has documented conversion factors that are based on facility specific data, these conversion factors may be used to report the amounts of waste when approved by the Director.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or operator must conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be

available to the Director or his authorized representative upon request.

(b) The Director or any duly authorized officer, employee, or representative of the Director may, at any reasonable time and upon presentation of appropriate credentials, enter any solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for the purpose of ascertaining compliance with Rules R315-301 through 320 and the approved plan of operation for the facility.

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder.

Not later than 60 days after certification of closure, the owner or operator of a solid waste disposal facility shall:

(a) submit plats and a statement of fact concerning the location of any disposal site to the county recorder to be recorded as part of the record of title; and

(b) submit proof of record of title filing to the Director.

R315-302-3. General Closure and Post Closure Requirements.

(1) Applicability.

(a) The owner or operator of any solid waste disposal facility that requires a permit shall meet the applicable standards of Section R315-302-3 and shall provide financial assurance for closure and post-closure care costs that meets the requirements of Rule R315-309.

(b) The requirements of Subsections (2), (3), and (4) of this section apply to any solid waste management facility as defined by Subsection 19-6-502(12). The requirements of Subsections (5), (6), and (7) of this section apply to:

(i) Class I, II, IV, V, and VI Landfills;

(ii) Class III Landfills as specified in Rule R315-304: and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run-off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the Director.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(m) which, when approved by the Director, will become part of the permit.

(c) The closure plan shall project time intervals at which sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility closure plan is required, the Director may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the Director.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and all approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the Director of the intent to implement the closure plan in whole or part, 60 days prior to the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or all of the facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the Director if justification for the extension is documented by the owner or operator.

(c) When an owner or operator completes closure of a solid waste management unit or facility closure is completed, he shall, within 90 days or as required by the Director, submit to the Director:

(i) facility or unit closure plans, except for Class IIIb, IVb, and VI Landfills, signed by a professional engineer registered in the state of Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the Director determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

(i) ground water and surface water monitoring;

(ii) leachate collection and treatment;

(iii) gas monitoring;

(iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;

(v) a description of the planned use of the property; and

(vi) any other activity required by the Director to protect human health and the environment for a period of 30 years or a period established by the Director.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(m) and as approved by the Director as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site becomes stabilized (i.e., little or no settlement, gas production or leachate generation) and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals at which post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions

and circumstances justify such amendment. If it is determined that amendment of a facility or unit post-closure plan is required, the Director may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The Director may direct that post-closure activities cease until the owner or operator receives a notice from the Director to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the Director, the owner or operator shall submit a certification to the Director, signed by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah stating why post-closure activities are no longer necessary (i.e., little or no settlement, gas production, or leachate generation).

(c) If the Director finds that post-closure monitoring has established that the facility or unit is stabilized (i.e., little or no settlement, gas production, or leachate generation) the Director may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-303. Landfilling Standards.
R315-303-1. Applicability.

The standards of Rule R315-303 apply to:

(1) Class I, II, and V Landfills;

(2) Class III Landfills as specified in Rule R315-304; and

(3) Class IV, and VI Landfills as specified in Rule R315-305.

R315-303-2. Standards for Performance.

(1) Ground Water. An owner or operator of a disposal facility shall not contaminate the ground water underlying the facility beyond the ground water quality standard set in Section R315-308-4 or, for constituents not set in Section R315-308-4, as established by the Director based on health risk standards.

(2) Air Quality and Explosive Gas Emissions.

(a) An owner or operator of a disposal facility shall not allow concentrations of explosive gases generated by the facility to exceed:

(i) twenty-five percent of the lower explosive limit for explosive gases in facility structures, excluding gas control or recovery system components; and

(ii) the lower explosive limit for explosive gases at the property boundary or beyond.

(b) An owner or operator of a disposal facility shall not cause a violation of any ambient air quality standard at the property boundary or emission standard from any emission of landfill gases, combustion or any other emission associated with the facility.

(3) Surface Waters. An owner or operator of a disposal facility:

(a) shall not cause a violation of any Utah Pollution Discharge Elimination System permit or standard from discharges of surface run-off, leachate or any liquid associated with the facility; and

(b) shall be in compliance under the Clean Water Act for any discharge as well as in compliance with any area-wide or state-wide plan under Section 208 or 319 of the Clean Water Act.

R315-303-3. Standards for Design.

(1) Minimizing Liquids. An owner or operator of a landfill shall minimize liquids admitted to active areas by:

(a) covering according to Subsection R315-303-4(4);

(b) prohibiting the disposal of containerized liquids larger than household size, noncontainerized liquids, sludge containing free liquids, or any waste containing free liquids in containers larger than household size;

(c) designing the landfill to prevent run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(d) designing the landfill to collect and treat the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(e) If the owner or operator of a landfill has received a storm water permit as issued by the Utah Division of Water Quality and is meeting the requirements of the permit, the landfill may be exempt, upon approval of the Director, from the run-on and run-off control requirements of Subsections R315-303-3(1)(c) and (d).

(2) Leachate Collection Systems.

(a) An owner or operator of a landfill required to install liners shall:

(i) install a leachate collection system sized according to water balance calculations or using other accepted engineering methods, either of which shall be approved by the Director;

(ii) install a leachate collection system so as to prevent no more than one foot depth of leachate developing at any point in the bottom of the landfill unit; and

(iii) install a leachate treatment system or a pretreatment system, if necessary, in the case of discharge to a municipal water treatment plant.

(b) The returning of leachate to the landfill or the recirculation of leachate in the landfill may be done only in landfills that have a composite liner system or an approved equivalent liner system.

(3) Liner Designs. An owner or operator of a landfill shall use liners of one of the following designs:

(a) Standard Design. The design shall have a composite liner system consisting of two liners and the associated liner protection layers and a drainage system for leachate collection:

(i) an upper liner made of synthetic material with a thickness of a least 60 mils; and

(ii) a lower liner of at least two feet thickness of recompacted clay or other soil material with a permeability of no more than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes, with the synthetic liner installed in direct and uniform contact with the compacted soil component; or

(b) Equivalent Design.

(i) The Director may approve an alternative liner design, on a site specific basis, if it can be documented that, under the conditions of location and hydrogeology, the equivalent design will minimize the migration of solid waste constituents or leachate into the ground or surface water at least as effectively as the liner design required in Subsection R315-303-3(3)(a).

(ii) When approving an equivalent liner design, the Director shall consider the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate; or

(c) Alternative Design.

(i) The owner or operator may use, as approved by the Director, an alternative design.

(ii) The owner or operator must demonstrate that the ground water quality protection standard of Subsection R315-303-2(1) can be met. The demonstration must be approved by the Director, and must be based upon:

(A) the hydrogeologic characteristics of the facility and the surrounding land;

(B) the climatic factors of the area;

(C) the volume and physical and chemical characteristics of the leachate;

(D) predictions of contaminate fate and transport in the subsurface that maximize contaminant migration and consider impacts on human health and the environment; and

(E) predictions of leachate flow from the base of the waste to the uppermost aquifer; or

(d) Stringent Design. When conditions of location, hydrogeology, or waste stream justify, the Director may require that the liner of a landfill be constructed to meet standards more stringent than the liner designs of Subsection R315-303-3(3)(a).

(e) Small Landfill Design.

(i) The small landfill design applies only to a Class II Landfill.

(ii) Each new Class II Landfill and any existing Class II Landfill seeking facility expansion shall meet the location standards of Section R315-302-1.

(iii) Each new and existing Class II Landfill shall meet the performance standards of Section R315-303-2.

(iv) A Class II Landfill, which meets the requirements of Subsection R315-303-3(3)(e)(v), is exempt from the liner, leachate collection system, and ground water monitoring

requirements of Rule R315-303.

(v) A Class II Landfill will be approved only if:

(A) there is no evidence of existing ground water contamination;

(B) the landfill serves a community that has no practicable waste management alternative as determined by the Director;

(C) the landfill is located in an area which receives less than 25 inches of annual precipitation;

(D) the landfill receives, on a yearly average, no more than 20 tons of waste per day, or if a tonnage cannot be determined, serves a population of no more than 8,900; and

(E) the landfill meets all the requirements in Rules R315-301 through 320 applicable to Class II landfills.

(vi) A Class II Landfill may lose the exemptions of the small landfill design if at any time the landfill receives more than 20 tons of solid waste per day, based on an annual average, or has caused ground water contamination.

(4) Closure. At closure, an owner or operator of a Class I, II, IIIa, IVa, and V Landfill shall use one of the following designs for the final cover.

(a) Standard Design. The standard design of the final cover shall consist of two layers:

(i) a layer to minimize infiltration, consisting of at least 18 inches of compacted soil, or equivalent, with a permeability of 1×10^{-5} cm/sec or less, or equivalent, shall be placed upon the final lifts;

(A) in no case shall the cover of the final lifts be more permeable than the bottom liner system or natural subsoils present in the unit; and

(B) the grade of surface slopes shall not be less than 2%, nor the grade of side slopes more than 33%, except where construction integrity and the integrity of erosion control can be demonstrated at steeper slopes; and

(ii) a layer to minimize erosion, consisting of:

(A) at least 6 inches of soil capable of sustaining vegetative growth placed over the compacted soil cover and seeded with grass, other shallow rooted vegetation or other native vegetation; or

(B) other suitable material, approved by the Director.

(b) Requirements for any Earthen Final Cover at a Landfill.

(i) Markers or other benchmarks shall be installed in any final earthen cover to indicate the thickness of the final cover. These markers shall be observed during each quarterly inspection and the earthen cover shall be raised to the appropriate thickness as necessary.

(ii) Erosion channels deeper than 10% of the total cover thickness shall be repaired as soon as possible following their discovery.

(c) Alternative Final Cover Design. The Director may approve an alternative final cover design, on a site specific basis, if it can be documented that:

(i) the alternative final cover achieves an equivalent reduction in infiltration as achieved by the standard design in Subsection R315-303-3(4)(a)(i); and

(ii) the alternative final cover provides equivalent protection from wind and water erosion as achieved by the standard design in Subsection R315-303-3(4)(a)(ii).

(d) The expected performance of an alternative final cover design shall be documented by the use of an appropriate mathematical model.

(i) The input for the modeling shall include the climatic conditions at the specific landfill site and the soil types that will make up the final cover.

(ii) The model shall:

(A) be run to show the expected performance of the final cover at normal precipitation for a period of time until stability has been reached; and

(B) shall be run to show the expected performance of the final cover during the five wettest years on record at the site or the nearest weather station.

(e) The Director shall use the following criteria as part of the basis for determining if an alternative final cover will be approved:

(i) If the landfill has a liner design that does not use a synthetic material such as HDPE, the model will compare the infiltration through the standard cover as required in Subsection R315-303-3(4)(a) and shall show that the alternative cover performs as well as the standard cover; or

(ii) If the landfill has a liner composed in part of a synthetic material such as HDPE, the model must show an infiltration rate of no greater that 3 millimeters of water per year during any year of the model run.

(f) If a landfill has been constructed using an approved alternative landfill design, the Director may require, on a site-specific basis, the landfill closure design to be more stringent than the standard design specified in Subsection R315-303-3(4)(a) to protect human health or the environment.

(g) In no case shall any modification be made to the final cover, as placed and approved at closure by the Director, unless that modification:

(i) is a necessary repair of the approved final cover;

(ii) maintains or improves the effectiveness of the final cover; and

(iii) is approved by the Director.

(5) Gas Control.

(a) An owner or operator shall design each landfill so that explosive gases are monitored quarterly.

(b) If the concentration of these gases ever exceed the standard set in Subsection R315-303-2(2)(a), the owner or operator must:

(i) immediately take all necessary steps to ensure protection of human health and, within 24 hours or the next business day, notify the Director;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan, that has been approved by the Director, for the explosive gas release, place a copy of the plan in the operating record, and notify the Director that the plan has been implemented.

(c) Collection and handling of explosive gases shall not be required if it can be shown that the explosive gases will not support combustion.

(d) The Director may, on a site specific basis, waive the requirement of monitoring explosive gases at a Class II Landfill. The wavier may be granted after:

(i) considering the characteristics of the landfill and the waste stream accepted;

(ii) taking into account climatic and hydrogeologic conditions of the site; and

(iii) completing a public comment period as specified by Section R315-311-3.

(iv) The Director may revoke any waiver from the requirement of monitoring explosive gases if the lack of monitoring explosive gases at the landfill presents a threat to human health or the environment.

(v) The requirement to monitor explosive gases inside buildings at a landfill may not be waived.

(e) A landfill that accepts no municipal waste, or other waste with potential to generate methane during decomposition, is exempt from the gas monitoring requirement of Subsection R315-303-3(5)(a).

(6) Design Drawings.

(a) Design drawings and as built drawings of any engineered structure, including landfill liners, leachate collection systems, run-on/run-off control systems, final covers, ground water monitoring systems, and gas collection systems,

shall be signed and sealed by a professional engineer registered in the State of Utah.

(b) As built drawings shall be submitted to the Director on or before 90 days following the completion of the engineered structure at the landfill.

(7) Other Requirements. An owner or operator shall design each landfill to provide for:

(a) fencing at the property or unit boundary or the use of other artificial or natural barriers to impede entry by the public and large animals. A lockable gate shall be required at the entry to the landfill;

(b) monitoring ground water according to Rule R315-308 using a design approved by the Director. The Director may also require monitoring of:

(i) surface waters, including run-off;

(ii) leachate; and

(iii) subsurface landfill gas movement and ambient air;

(c) weighing or estimating the tonnage of all incoming waste and recording the tonnage in the facility's operation record;

(d) erecting a sign at the facility entrance that identifies at least the name of the facility, the hours during which the facility is open for public use, unacceptable materials, and an emergency telephone number. Other pertinent information may also be included;

(e) adequate fire protection to control any fires that may occur at the facility. This may be accomplished by on-site equipment or by arrangement made with the nearest fire department;

(f) preventing potential harborage in buildings, facilities, and active areas of rat and other vectors, such as insects, birds, and burrowing animals;

(g) minimizing the size of the unloading area and working face as much as possible, consistent with good traffic patterns and safe operation;

(h) approach and exit roads of all-weather construction, with traffic separation and traffic control on-site and at the site entrance; and

(i) communication, such as telephone or radio, between employees working at the landfill and management offices on-site and off-site to handle emergencies.

R315-303-4. Standards for Maintenance and Operation.

(1) Plan of Operation. An owner or operator of a landfill shall maintain and operate the facility to conform to the approved plan of operation.

(2) Operating Details. An owner or operator of a landfill shall operate the facility to:

(a) control fugitive dust generated from roads, construction, general operations, and covering the waste;

(b) allow no open burning;

(c) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance;

(d) prohibit scavenging;

(e) conduct reclamation of facility property in an orderly sanitary manner and in a way that does not interfere with the disposal site operation;

(f) ensure that landfill personnel, trained in landfill operations, are on site when the site is open to the public;

(i) at least one person on site for landfills that receive, on an average annual basis, less than 15,000 tons per year; and

(ii) at least two persons on site, with one person at the active face, for each landfill that receives, on an average annual basis, more than 15,000 tons per year.

(g) control insects, rodents, and other vectors; and

(h) ensure that reserve operational equipment will be available to maintain and meet these standards.

(3) Boundary Posts. An owner or operator of a landfill shall clearly mark the active area boundaries authorized in the permit by placing permanent posts or by using an equivalent method clearly visible for inspection purposes.

(4) Daily and Intermediate Cover.

(a) An owner or operator of a landfill shall, at the close of each day of operation, completely cover the waste with at least six inches of soil or an alternative daily cover as allowed in Subsections R315-303-4(4)(b) through (e).

(b) The following are approved for use as alternative daily covers:

(i) non-hazardous contaminated soil; and

(ii) subject to the conditions contained in Subsection R315-303-4(4)(c):

(A) tarps;

(B) plastic sheets, when designed for landfill cover use;

(C) foam products, when designed for landfill cover use;

(D) products created from cement kiln dust, when designed for landfill cover use;

(E) incinerator ash;

(F) non-hazardous auto shredder residue not otherwise regulated by 40 CFR Part 761;

(G) chipped waste tires; and

(H) spray-on materials, when designed for landfill cover use.

(c) The use of an approved alternative daily cover is subject to the following conditions:

(i) the alternative daily cover may not present a threat to human health or the environment; and

(ii) the alternative daily cover may be used only on a schedule as established by the facility owner or operator and recorded in the facility operating record.

(iii) The facility owner or operator shall establish the schedule for use of the approved alternative cover based on the alternative cover's performance in controlling vectors, fires, odors, blowing, and scavenging. The schedule shall the following requirements:

(A) any schedule established by the facility owner or operator must provide for the placing of six inches of soil cover at least once per week;

(B) no approved alternative daily cover may be used on the day preceding a day the landfill will be closed;

(C) No alternative daily cover may be used on an area of the landfill that will not be covered with waste or an intermediate cover, as required in Subsection R315-303-4(4)(g), within two days; and

(D) The Director may require the use of six inches of soil cover upon finding that use of an alternative cover is not controlling vectors, fires, odors, blowing liter or scavenging.

(iv) The landfill operating record must clearly document the days when an alternative cover was used and the days when soil cover was used.

(v) The Director may revoke the use of any alternative daily cover at any landfill facility if any condition of Subsection R315-303-4(4)(c) is not met or if the alternative daily cover is determined to present a threat to human health or the environment.

(d) Materials not listed in Subsection R315-303-4(4)(b) may be used as alternative daily cover on an infrequent basis when the material meets the requirements of Subsection R315-303-4-(4)(c) and the use is documented in the facility operating record.

(e) Materials not listed in Subsection R315-303-4(4)(b) which a facility owner or operator wants to use on an ongoing basis must be approved by the Director. Director approval is based on the material meeting the requirements of Subsection R315-303-4(4)(c).

(f) The Director may, on a site specific basis, waive the requirement for daily cover of the waste at a landfill that accepts no municipal waste if the owner or operator demonstrates that an alternative schedule for covering the waste does not present

a threat to human health or the environment. The demonstration from the owner or operator of the landfill must include at least the following:

(i) certification that the landfill accepts no municipal waste;

(ii) a detailed list of the waste types accepted by the landfill;

(iii) the alternative schedule on which the waste will be covered; and

(iv) any other operational practices that may reduce the threat to human health or the environment if an alternative schedule for covering the waste is followed.

(v) In granting any wavier from the daily cover requirement, the Director may place conditions on the owner or operator of the landfill as to the frequency of covering, depth of the cover, or type of material used as cover that will minimize the threat to human health or the environment.

(vi) The Director may revoke any waiver from the daily cover requirement if any condition is not met or if the alternative schedule for covering the waste presents a threat to human health or the environment.

(g) If an area of the working face of a landfill that accepts municipal waste will not receive waste for a period longer than 30 days, the owner or operator shall cover the area with a minimum of 12 inches of soil as an intermediate cover or an alternative intermediate cover as approved by the Director.

(i) No alternative intermediate cover will be approved by the Director without application from the owner or operator.

(ii) Approval for an alternative intermediate cover may be granted after:

(A) considering the design of the landfill, waste stream accepted, and waste handling practices; and

(B) taking into account climatic, hydrogeologic, and soil conditions of the site.

(iii) In granting approval for an alternative intermediate cover, the Director may place conditions on the owner or operator of the landfill as to the depth or type of material used and maintenance of the integrity of the cover that will minimize the threat to human health or the environment.

(iv) The Director may revoke the approval of an alternative intermediate cover if any condition is not met or if the use of the alternative intermediate cover is determined to present a threat to human health or the environment.

(5) Monitoring Systems. An owner or operator of a landfill shall maintain the monitoring systems required in Subsection R315-303-3(7)(b).

(6) Recycling Required.

(a) An owner or operator of a landfill at which the general public delivers household solid waste shall provide containers in which the general public may place recyclable materials for which a market exists. The containers shall be placed at a location convenient to the public and shall be accessible to the public during normal hours of facility operation.

(b) An owner or operator may demonstrate alternative means to providing an opportunity for the general public to recycle household solid waste.

(7) Disposal of Hazardous Waste and Waste Containing PCBs.

(a) An owner or operator of a solid waste disposal facility shall not knowingly dispose, treat, store, or otherwise handle hazardous waste or waste containing PCBs except under the following conditions:

(i) hazardous waste:

(A) the waste meets the conditions specified in Subsections R315-261-4; or

(B) the waste meets the conditions specified in R315-261-5; or

(ii) waste containing PCB's:

(A) the facility meets the requirements specified in Subsection R315-315-7(3)(a); or

(B) the waste meets the requirements specified in Subsections R315-315-7(2) or (3)(b).

(b) An owner or operator of a solid waste disposal facility shall include and implement, as part of the plan of operation, a plan that will inspect loads or take other steps, as approved by the Director, that will prevent the disposal of prohibited hazardous waste and prohibited waste containing PCBs, including:

(i) inspection frequency and inspection of loads suspected of containing prohibited hazardous waste or prohibited waste containing PCBs;

(ii) inspection in a designated area or at a designated point in the disposal process;

(iii) a training program for the facility employees in identification of prohibited hazardous waste and prohibited waste containing PCBs; and

(iv) maintaining written records of all inspections, signed by the inspector.

(c) If the receipt of prohibited hazardous waste or prohibited waste containing PCBs is discovered, the owner or operator of the facility shall:

(i) notify the Director, the hauler, and the generator within 24 hours;

(ii) restrict the inspection area from public access and from facility personnel; and

(iii) assure proper cleanup, transport, and disposal of the waste.

KEY: solid waste management, waste disposal

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities.
R315-311-1. General Requirements.

(1) Upon submittal of the complete information required by Rule R315-310, as determined by the Director, a draft permit or permit denial will be prepared and the owner or operator of the new or existing facility will be notified in writing by the Director.

(a) After meeting the requirements of the public comment period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit which will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction shall not begin prior to the receipt of the permit.

(c) An application that has been initiated by an owner or operator but for which the Director has not received a response to questions about the application for more than one year shall be canceled.

(2) Solid waste disposal facility plan approval and permit issuance will depend upon:

(a) the adequacy of the facility in meeting the location standards in Section R315-302-1;

(b) the hydrology and geology of the area; and

(c) the adequacy of the plan of operation, facility design, and monitoring programs in meeting the requirements of the applicable rules.

(3) A permit can be granted for up to ten years by the Director, except as allowed in Subsection R315-311-1(5).

(4) The owner or operator, or both, when the owner and the operator are not the same person, of each solid waste facility shall:

(a) apply for a permit renewal, as required by Section R315-310-10, 180 days prior to the expiration date of the current permit if the permit holder intends to continue operations after the current permit expires; and

(b) for facilities for which financial assurance is required by R315-309-1, submit, for review and approval by the Director on a schedule of no less than every five years, a complete update of the financial assurance required in Rule R315-309 which shall contain:

(i) a calculation of the current costs of closure as required by Subsection R315-309-2(3); and

(ii) a calculation that is not based on a closure cost which has been obtained by applying an inflation factor to past cost estimates.

(5) A permit for a facility in post-closure care:

(i) may be issued for the life of the post-closure care period; and

(ii) the holder of the post-closure care permit shall comply with Subsection R315-311-1(4)(b).

R315-311-2. Permit Modification, Renewal, or Termination.

(1) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Director's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Director and shall contain facts or reasons supporting the request. Requests for permit modification, renewal, or termination shall become effective only upon approval by the Director.

(a) Minor modifications of a permit or plan of operation shall not be subject to the 30 day public comment period as required by Section R315-311-3. A permit modification shall be considered minor if:

(i) typographical errors are corrected;

(ii) the name, address, or phone number of persons or agencies identified in the permit are changed;

(iii) administrative or informational changes are made;

(iv) procedures for maintaining the operating record are changed or the location where the operating record is kept is changed;

(v) changes are made to provide for more frequent monitoring, reporting, sampling, or maintenance;

(vi) a compliance date extension request is made for a new date not to exceed 120 days after the date specified in the approved permit;

(vii) changes are made in the expiration date of the permit to allow an earlier permit termination;

(viii) changes are made in the closure schedule for a unit, in the final closure schedule for the facility, or the closure period is extended;

(ix) the Director determines, in the case of a permit transfer application, that no change in the permit other than the change in the name of the owner or operator is necessary;

(x) equipment is upgraded or replaced with functionally equivalent components;

(xi) changes are made in sampling or analysis methods, procedures, or schedules;

(xii) changes are made in the construction or ground water monitoring quality control/quality assurance plans which will better certify that the specifications for construction, closure, sampling, or analysis will be met;

(xiii) changes are made in the facility plan of operation which conform to guidance or rules approved by the Board or provide more efficient waste handling or more effective waste screening;

(xiv) an existing monitoring well is replaced with a new well without changing the location;

(xv) changes are made in the design or depth of a monitoring well that provides more effective monitoring;

(xvi) changes are made in the statistical method used to statistically analyze the ground water quality data; or

(xvii) Changes are made in any permit condition that are more restrictive or provide more protection to health or the environment.

(b) The Director may subject any minor modification request to the 30-day public comment period if justified by conditions and circumstances.

(c) A permit modification that does not meet the requirements of Subsection R315-311-2(1)(a) for a minor modification shall be a major modification.

(d) If the Director determines that major modifications to a permit or plan of operation are justified, a new operational plan incorporating the approved modifications shall be prepared. The modifications shall be subject to the public comment period as specified in Section R315-311-3.

(2) An application for permit renewal shall consist of the information required by Section R315-310-9. Upon receipt of the application, the Director will review the application and will notify the applicant as to what information or change of operational practice is required of the applicant, if any, to receive a permit renewal. The current permit shall remain in effect until issuance or denial of a new permit. Each permit renewal shall be subject to the public comment requirements of Section R315-311-3.

(3) The Director shall notify, in writing, the owner or operator of any facility of intent to terminate a permit. A permit may be terminated for:

(a) noncompliance with any condition of the permit;

(b) noncompliance with any applicable rule;

(c) failure in the application or during the approval or renewal process to disclose fully all relevant facts;

(d) misrepresentation by the owner or operator of any

relevant facts at any time; or

(e) a determination that the solid waste activity or facility endangers human health or the environment.

(4) The owner or operator of a facility may appeal any action

associated with modification, renewal, or termination in accordance with Section R315-317-3, Title 63G Chapter 4, and Rule R305-7.

R315-311-3. Public Comment Period.

(1) The draft permit, permit renewal, or major modification of a permit, for each solid waste facility that requires a permit, shall be subject to a 30-day public comment period.

(2) A public hearing may be held if a request for public hearing is submitted to the Director in writing:

(a) by a local government, a state agency, ten interested persons, or an interested association having not fewer than ten members; and

(b) the request is received by the Director not more than 15 days after the publication of the public notice.

(3) After due consideration of all comments received, final determination on draft permits or major modification of permits will be made available by public notice.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-317. Other Processes, Variances, Violations, and Petition for Rule Change.
R315-317-1. Other Processes, Methods, and Equipment.

Processes, methods, and equipment other than those specifically addressed in Rules R315-301 through 320 will be considered on an individual basis by the Director upon submission of evidence of adequacy to meet the minimum standards of performance to protect human health and the environment as required in Section R315-303-2.

R315-317-2. Variances.

(1) Variances will be granted in accordance with Section R315-260-19.

R315-317-3. Violations, Orders, and Hearings.

(1) Whenever the Director or his duly appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of Rules R315-301 through 320, the Director may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The Director may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or the requirements of Rules R315-301 through 320.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is issued, the person to whom the order is addressed challenges the order as provided in 19-1-301 and the Utah Administrative Procedures Act, Title 63G, Chapter 4 and shall be governed by UAC R305-7.

R315-317-4. Petition for Rule Change.

(1) The requirements of Section R315-317-4 shall apply to a petition for:

(a) making a new rule;

(b) amending, repealing, or repealing and reenacting and existing rule;

(c) amending a proposed rule;

(d) allowing a proposed rule or change in proposed rule to lapse; or

(e) any combination of the above.

(2) Petition Procedure and Form.

(a) The petition shall be addressed and delivered to the Director.

(b) The petition shall follow the requirements of Sections R15-2-3 through 5.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-320. Waste Tire Transporter and Recycler Requirements.
R315-320-1. Authority, Purpose, and Inspection.

(1) The waste tire transporter and recycler requirements are promulgated under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, and the Solid and Hazardous Waste Act Title 19, Chapter 6, to protect human health; to prevent land, air and water pollution; to conserve the state's natural, economic, and energy resources; and to promote recycling of waste tires.

(2) Except for Subsections R315-320-4(7) and R315-320-5(7), which apply to the application fees for the registration of a waste tire transporter and a waste tire recycler throughout the state, Rule R315-320 does not supersede any ordinance or regulation adopted by the governing body of a political subdivision or local health department if the ordinance or regulation is at least as stringent as Rule R315-320, nor does Rule R315-320 relieve a tire transporter or recycler from the requirement to meet all applicable local ordinances or regulations.

(3) The Director or an authorized representative may enter and inspect the site of a waste tire transporter or a waste tire recycler as specified in Subsection R315-302-2(5)(b).

R315-320-2. Definitions.

Terms used in Rule R315-320 are defined in Sections R315-301-2 and 19-6-803. In addition, for the purpose of Rule R315-320, the following definitions apply:

(1) "Demonstrated market" or "market" means the legal transfer of ownership of material derived from waste tires between a willing seller and a willing buyer meeting the following conditions:

(a) total control of the material derived from waste tires is transferred from the seller to the buyer;

(b) the transfer of ownership and control is an "arms length transaction" between a seller and a buyer who have no other business relationship or responsibility to each other;

(c) the transaction is done under contract which is documented and verified by orders, invoices, and payments; and

(d) the transaction is at a price dictated by current economic conditions.

(e) the possibility or potential of sale does not constitute a demonstrated market.

(2) "Waste tire generator" means a person, an individual, or an entity that may cause waste tires to enter the waste stream. A waste tire generator may include:

(a) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, or other person, individual, or entity that removes or replaces tires on a vehicle; or

(b) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, a waste tire transporter, a waste tire recycler, a waste tire processor, a waste tire storage facility, or a disposal facility that receives waste tires from a person, an individual, or an entity.

R315-320-3. Landfilling of Waste Tires and Material Derived from Waste Tires.

(1) Disposal of waste tires or material derived from waste tires is prohibited except as allowed by Subsection R315-320-3(2) or (3).

(2) Landfilling of Whole Tires. A landfill may not receive whole waste tires for disposal except as follows:

(a) waste tires delivered to a landfill no more than four whole tires at one time by an individual, including a waste tire transporter; or

(b) waste tires from devices moved exclusively by human power; or

(c) waste tires with a rim diameter greater than 24.5 inches.

(3) Landfilling of Material Derived from Waste Tires.

(a) A landfill, which has a permit issued by the Director, may receive material derived from waste tires for disposal.

(b) Except for the beneficial use of material derived from waste tires at a landfill, material derived from waste tires shall be disposed in a separate landfill cell that is designed and constructed, as approved by the Director, to keep the material in a clean and accessible condition so that it can reasonably be retrieved from the cell for future recycling.

(4) Reimbursement for Landfilling Shredded Tires.

(a) The owner or operator of a permitted landfill may apply for reimbursement for landfilling shredded tires as specified in Subsection R315-320-6(1).

(b) To receive the reimbursement, the owner or operator of the landfill must meet the following conditions:

(i) the waste tires shall be shredded;

(ii) the shredded tires shall be stored in a segregated cell or other landfill facility that ensures the shredded tires are in a clean and accessible condition so that they can be reasonably retrieved and recycled at a future time; and

(iii) the design and operation of the landfill cell or other landfill facility has been reviewed and approved by the Director prior to the acceptance of shredded tires.

(5) Violation of Subsection R315-320-3(1), (2), or (3) is subject to enforcement proceedings and a civil penalty as specified in Subsection 19-6-804(4).

R315-320-4. Waste Tire Transporter Requirements.

(1) Each waste tire transporter who transports waste tires within the state of Utah must apply for, receive and maintain a current waste tire transporter registration certificate from the Director.

(2) Each applicant for registration as a waste tire transporter shall complete a waste tire transporter application form provided by the Director and provide the following information:

(a) business name;
(b) address to include:
(i) mailing address; and
(ii) site address if different from mailing address;
(c) telephone number;
(d) list of vehicles used including the following:
(i) description of vehicle;
(ii) license number of vehicle;
(iii) vehicle identification number; and
(iv) name of registered owner;
(e) name of business owner;
(f) name of business operator;
(g) list of sites to which waste tires are to be transported;
(h) liability insurance information as follows:
(i) name of company issuing policy;
(ii) amount of liability insurance coverage; and
(iii) term of policy.
(i) meet the requirements of R315-320-4(3)(b) and (c).

(3) A waste tire transporter shall:

(a) demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising form transporting waste tires. The waste tire transporter shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of $300,000;

(b) for the initial application for a waste tire transporter registration or for any subsequent application for registration at a site not previously registered, demonstrate to the Director that all local government requirements for a waste tire transporter have been met, including obtaining all necessary permits or

approvals where required; and

(c) demonstrate to the Director that the waste tires transported by the transporter are taken to a registered waste tire recycler or that the waste tires are placed in a permitted waste tire storage facility that is in full compliance with the requirements of Rule R315-314. Filling of a complete report as required in Subsection R315-320-4(9) shall constitute compliance with this requirement.

(4) A waste tire transporter shall notify the Director of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-4(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-4(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-4(3); and

(c) payment of the fee as established by the Annual Appropriations Act.

(6) A waste tire transporter registration certificate is not transferable and shall be issued for the term of one year.

(7) If a waste tire transporter is required to be registered by a local government or a local health department:

(a) the waste tire transporter may be assessed an annual registration fee by the local government or the local health department not to exceed to the following schedule:

(i) for one through five trucks, $50; and

(ii) $10 for each additional truck;

(b) the Director shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-4(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-4(5)(c), if the fee allowed in Subsection R315-320-4(7)(a) is paid; and

(c) the registration certificate shall be valid for one year.

(8) Waste tire transporters storing tires in piles must meet the requirements of Rule R315-314.

(9) Reporting Requirements.

(a) Each waste tire transporter shall submit a quarterly activity report to the Director. The activity report shall be submitted on or before the 30th of the month following the end of each quarter.

(b) The activity report shall contain the following information:

(i) the number of waste tires collected at each waste tire generator, including the name, address, and telephone number of the waste tire generator;

(ii) the number of tires shall be listed by the type of tire based on the following:

(A) passenger/light truck tires or tires with a rim diameter of 19.5 inches or less;

(B) truck tires or tires ranging in size from 7.50x20 to 12R24.5; and

(C) other tires such as farm tractor, earth mover, motorcycle, golf cart, ATV, etc.

(iii) the number or tons of waste tires shipped to each waste tire recycler or processor for a waste tire recycler, including the name, address, and telephone number of each recycler or processor;

(iv) the number of tires shipped as used tires to be resold;

(v) the number of waste tires placed in a permitted waste tire storage facility; and

(vi) the number of tires disposed in a permitted landfill, or put to other legal use.

(c) The activity report may be submitted in electronic format.

(10) Revocation of Registration.

(a) The registration of a waste tire transporter may be revoked upon the Director finding that:

(i) the activities of the waste tire transporter that are regulated under Section R315-320-4 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire transporter has made a material misstatement of fact in applying for or obtaining a registration as a waste tire transporter or in the quarterly activity report required by Subsection R315-320-4(9);

(iii) the waste tire transporter has provided a recycler with a material misstatement of fact which the recycler subsequently used as documentation in a request for partial reimbursement under Section 19-6-813;

(iv) the waste tire transporter has violated any provision of the Waste Tire Recycling Act, Title 19 Chapter 6, or any order, approval, or rule issued or adopter under the Act;

(v) the waste tire transporter failed to meet or no longer meets the requirements of Section R315-320-4;

(vi) the waste tire transporter has been convicted under Subsection 19-6-822; or

(vii) the waste tire transporter has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-4(10)(a), the statements, actions, or failure to act of a waste tire transporter shall include the statements, actions, or failure to act of any officer, director, agent or employee of the waste tire transporter.

(d) The administrative procedures set forth in Section R305-7 shall govern revocation of registration.

R315-320-5. Waste Tire Recycler Requirements.

(1) Each waste tire recycler requesting the reimbursement allowed by Subsection 19-6-809(1), must apply for, receive, and maintain a current waste tire recycler registration certificate from the Director.

(2) Each applicant for registration as a waste tire recycler shall complete a waste tire recycler application form provided by the Director and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) owner name;

(e) operator name;

(f) description of the recycling process;

(g) proof that the recycling process described in Subsection R315-320-5(2)(f) :

(i) is being conducted at the site; or

(ii) for the initial application for a recycler registration, that the recycler has the equipment in place and the ability to conduct the process at the site;

(h) estimated number of tires to be recycled each year;

(i) liability insurance information as follows:

(i) name of company issuing policy;

(ii) proof of the amount of liability insurance coverage; and

(iii) term of policy; and

(j) meet the requirements of Subsection R315-320-5(3)(b).

(3) A waste tire recycler shall:

(a) demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from storing and recycling waste tires. The waste tire recycler shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of $300,000; and

(b) for the initial application for a recycler registration or for any subsequent application for registration at a site not previously registered, demonstrate to the Director that all local requirements for a waste tire recycler have been met, including obtaining all necessary permits or approvals where required.

(4) A waste tire recycler shall notify the Director of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-5(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-5(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-5(3); and

(c) payment of the fee as established by the Annual Appropriations Act.

(6) A waste tire recycler registration certificate is not transferable and shall be issued for a term of one year.

(7) If a waste tire recycler is required to be registered by a local government or a local health department:

(a) the waste tire recycler may be assessed an annual registration fee by the local government or local health department according to the following schedule:

(i) if up to 200 tons of waste tires are recycled per day, the fee shall not exceed $300;

(ii) if 201 to 700 tons of waste tires are recycled per day, the fee shall not exceed $400; or

(iii) if over 700 tons of waste tires are recycled per day, the fee shall not exceed $500.

(b) The Director shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-5(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-5(5)(c), if the fee allowed by Subsection R315-320-5(7)(a) is paid.

(c) The registration certificate shall be valid for one year.

(8) Waste tire recyclers must meet the requirements of Rule R315-314 for waste tires stored in piles.

(9) Revocation of Registration.

(a) The registration of a waste tire recycler may be revoked upon the Director finding that:

(i) the activities of the waste tire recycler that are regulated under Section R315-320-5 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire recycler has made a material misstatement of fact in applying for or obtaining a registration as a waste tire recycler;

(iii) the waste tire recycler has made a material misstatement of fact in applying for partial reimbursement under Section 19-6-813;

(iv) the waste tire recycler has violated any provision of the Waste Tire Recycling Act, Title 19 Chapter 6, or any order, approval, or rule issued or adopted under the Act;

(v) the waste tire recycler has failed to meet or no longer meets the requirements of Subsection R315-320-5(1);

(vi) the waste tire recycler has been convicted under Subsection 19-6-822; or

(vii) the waste tire recycler has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-5(9)(a), the statements, action, or failure to act of a waste tire recycler shall include the statements, actions, or failure to act of any officer, director, agent, or employee of the waste tire recycler.

(d) The administrative procedures set forth in Section R305-7 shall govern revocation of registration.

R315-320-6. Reimbursement for Recycling Waste Tires.

(1) No partial reimbursement request submitted by a waste tire recycler for the first time, or the first time a specific recycling process or a beneficial use activity is used, shall be approved by a local health department under Section 19-6-813 until the local health department has received from the Director a written certification that the Director has determined the processing of the waste tires is recycling or a beneficial use. If the reimbursement request contains sufficient information, the Director shall make the recycling or beneficial use determination and notify the local health department in writing within 15 days of receiving the request for determination.

(2) No partial reimbursement may be requested or paid for waste tires that were generated in Utah and recycled at an out-of-state location except as allowed by Subsection 19-6-809(1)(a)(ii)(C) or (D).

(3) In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information required by Section R315-320-5 or Section R315-320-6 shall be ineligible to receive any reimbursement and shall return to the Division of Finance any reimbursement previously received that was obtained through the use of false information.

R315-320-7. Reimbursement for the Removal of an Abandoned Tire Pile or a Tire Pile at a Landfill Owned by a Governmental Entity.

(1) A county or municipality applying for payment for removal of an abandoned tire pile or a tire pile at a county or municipal owned landfill shall meet the requirements of Section 19-6-811.

(2) Determination of Reasonability of a Bid.

(a) The following items shall be submitted to the Director when requesting a determination of reasonability of a bid as specified in Subsections 19-6-811(3) and (4):

(i) a copy of the bid;

(ii) a letter from the local health department stating that the tire pile is abandoned or that the tire pile is at a landfill owned or operated by a governmental entity; and

(iii) a written statement from the county or municipality that the bidding was conducted according to the legal requirements for competitive bidding.

(b) The Director will review the submitted documentation in accordance with Subsection 19-6-811(4) and will inform the county or municipality if the bid is reasonable.

(c) A determination of reasonability of the bid will be made and the county or municipality notified within 30 days of receipt of the request by the Director.

(d) A bid determined to be unreasonable shall not be deemed eligible for reimbursement.

(3) If the Director determines that the bid to remove waste tires from an abandoned waste tire pile or from a waste tire pile at a landfill owned or operated by a governmental entity is reasonable and that there are sufficient monies in the trust fund to pay the expected reimbursements for the transportation, recycling, or beneficial use under Section 19-6-809 during the next quarter, the Director may authorize a maximum reimbursement of:

(a) 100% of a waste tire transporter's or recycler's costs allowed under Subsection 19-6-811(2) to remove the waste tires from the waste tire pile and deliver the waste tires to a recycler if no waste tires have been added to the waste tire pile after June 30, 2001; or

(b) 60% of a waste tire transporter's or recycler's costs allowed under Subsection 19-6-811(2) to remove the waste tires from the waste tire pile and deliver the waste tires to a recycler if waste tires have been added to the waste tire pile after June 30, 2001.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-105
Notice of Continuation February 13, 2013 19-6-819

R333. Financial Institutions, Banks.
R333-13. Rule Designating Applicable Federal Law for Banks Subject to the Jurisdiction of the Department of Financial Institutions.
R333-13-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-325.

(2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.

(3) This rule designates which one or more federal laws the department may enforce and are applicable to banks subject to the jurisdiction of the department.

R333-13-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Federal Law" means:

(a) a statute passed by the Congress of the United States; or

(b) a final regulation:

(i) adopted by an administrative agency of the United States government; and

(ii) published in the code of federal regulations or the federal register.

R333-13-3. Applicable Federal Law.

In accordance with Section 7-1-325, the following federal laws are applicable to banks subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Truth in Savings Act, 12 U.S.C. Sec. 4301 et seq., and its implementing federal regulations;

(4) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations;

(5) Federal Deposit Insurance Corporation Improvement Act ("Prompt Corrective Action"), 12 U.S.C. Sec. 1831o, and its implementing federal regulations;

(6) Federal Reserve Act, 12 U.S.C. Sec. 371c through 371c-1 ("Banking affiliates"), made applicable to state nonmember insured institutions through 12 U.S.C. Sec. 1828(j)(i), and its implementing federal regulations;

(7) Federal Reserve Act, 12 U.S.C. Sec. 375a ("Loans to executive officers of banks"), made applicable to state nonmember institutions through 12 U.S.C. Sec. 1828(j)(2), and its implementing federal regulations;

(8) Federal Deposit Insurance Corporation Improvement Act, ("Standards for safety and soundness"), 12 U.S.C. Sec. 1831p-1, and its implementing federal regulations;

(9) Federal Deposit Insurance Corporation Improvement Act, ("Real estate lending standards"), 12 U.S.C. Sec. 1828(o), and its implementing federal regulations;

(10) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(11) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(12) Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., and its implementing federal regulations;

(13) Electronic Fund Transfers Act, 15 U.S.C. Sec. 1693 et seq., and its implementing federal regulations;

(14) Community Reinvestment Act, 12 U.S.C. Sec. 2901 et seq., and its implementing federal regulations.

KEY: financial institutions, federal law
December 22, 2006 7-1-325(2)

Notice of Continuation December 6, 2016

R339. Financial Institutions, Industrial Loan Corporations.
R339-12. Rule Designating Applicable Federal Law for Industrial Loan Corporations Subject to the Jurisdiction of the Department of Financial Institutions.
R339-12-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-325.

(2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.

(3) This rule designates which one or more federal laws the department may enforce and are applicable to industrial loan corporations subject to the jurisdiction of the department.

R339-12-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Federal Law" means:

(a) a statute passed by the Congress of the United States; or

(b) a final regulation:

(i) adopted by an administrative agency of the United States government; and

(ii) published in the code of federal regulations or the federal register.

R339-12-3. Applicable Federal Law.

In accordance with Section 7-1-325, the following federal laws are applicable to industrial loan corporations subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Truth in Savings Act, 12 U.S.C. Sec. 4301 et seq., and its implementing federal regulations;

(4) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations;

(5) Federal Deposit Insurance Corporation Improvement Act ("Prompt Corrective Action"), 12 U.S.C. Sec. 1831o, and its implementing federal regulations;

(6) Federal Reserve Act, 12 U.S.C. Sec. 371c through 371c-1 ("Banking affiliates"), made applicable to state nonmember insured institutions through 12 U.S.C. Sec. 1828(j)(i), and its implementing federal regulations;

(7) Federal Reserve Act, 12 U.S.C. Sec. 375a ("Loans to executive officers of banks"), made applicable to state nonmember institutions through 12 U.S.C. Sec. 1828(j)(2), and its implementing federal regulations;

(8) Federal Deposit Insurance Corporation Improvement Act, ("Standards for safety and soundness"), 12 U.S.C. Sec. 1831p-1, and its implementing federal regulations;

(9) Federal Deposit Insurance Corporation Improvement Act, ("Real estate lending standards"), 12 U.S.C. Sec. 1828(o), and its implementing federal regulations;

(10) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(11) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(12) Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., and its implementing federal regulations;

(13) Electronic Fund Transfers Act, 15 U.S.C. Sec. 1693 et seq., and its implementing federal regulations;

(14) Community Reinvestment Act, 12 U.S.C. Sec. 2901 et seq., and its implementing federal regulations.

KEY: financial institutions, federal law
December 22, 2006 7-1-325(2)

Notice of Continuation December 6, 2016

R384. Disease Control and Prevention, Health Promotion.
R384-415. Electronic-Cigarette Substance Standards.
R384-415-1. Authority and Purpose.

(1) This rule is authorized by Section 26-57-103 and Subsection 59-14-803(5).

(2) This rule establishes standards for labeling, nicotine content, packaging, and product quality for electronic-cigarette substances for the regulation of electronic-cigarettes.

(3) This rule does not apply to a manufacturer-sealed electronic-cigarette substance.

(4) A product in compliance with this rule is not endorsed as safe.

R384-415-2. Definitions.

As used in this rule:

(1) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit or non-profit purposes.

(2) "Child resistant" means the same as the term "special packaging" is defined in 16 C.F.R 1700.1(a)(4) (January 1, 2015) and is tested in accordance with the method described in 16 C.F.R. 1700.20 (January 1, 2015).

(3) "Department" means the Utah Department of Health.

(4) "Electronic-cigarette" means the same as the term is defined in Subsections 26-38-2(1) and 59-14-802(2).

(5) "Electronic-cigarette Product" means the same as the term is defined in Subsection 59-14-802(3).

(6) "Electronic-cigarette substance" means the same as the term is defined in Subsection 59-14-802(4).

(7) "Local health department" means the same as the term is defined in Subsection 26A-1-102(5).

(8) "Manufacture" means the same as the term is defined in Subsection 26-57-102(5).

(9) "Manufacturer" means the same as the term is defined in Subsection 26-57-102(6).

(10) "Mg/mL" means milligrams per milliliter, a ratio for measuring an ingredient, in liquid form, where accuracy is measured in milligrams per milliliter, or a percentage equivalent.

(11) "Nicotine" means the same as the term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 387(12) (2013).

(12) "Manufacturer-sealed electronic-cigarette substance" means the same as the term defined is in Subsection 26-57-102(6).

(13) "Package "or "packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, in which an electronic cigarette substance is offered for sale, sold, or otherwise distributed to consumers.

(14) "Retailer" means any person who sells, offers for sale, or offers to exchange for any form of consideration, an electronic-cigarette substance to a consumer. This definition is without regard to the quantity of an electronic-cigarette substance sold, offered for sale, exchanged, or offered for exchange.

(15) "Retailing" means involvement in any of the activities listed in Subsection R384-415-2(14). This definition is without regard to the quantity of an electronic-cigarette substance sold, offered for sale, exchanged, or offered for exchange.

(16) "Transaction statement" means a statement, in paper or electronic form, which the manufacturer transferring ownership of the product certifies that the electronic-cigarette substance is in compliance with the standards in this rule.

R384-415-3. Labeling.

(1) The retailer shall ensure that nicotine containing electronic-cigarette substance offered for sale to the consumer features on the product package label the required safety warning stating "WARNING": This product contains nicotine. Nicotine is an addictive chemical."

(2) The retailer shall ensure that an electronic-cigarette substance marketed as nicotine-free and offered for sale to the consumer features a safety warning stating "WARNING: Keep away from children and pets."

(3) The retailer shall ensure that the required safety warning appear directly on the package and must be visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principle display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) is capitalized and punctuated as indicated in Subsection (1) or (2) of this Section;

(c) be printed in at least 12-point font size and ensure that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(d) uses a conspicuous and legible Helvetica, Arial, or other san serif font;

(e) uses either a black font on a white background or a white font on a black background; and

(f) is centered in the warning area in which the text is required to be printed and positions such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

(4) A retailer of an electronic-cigarette substance will not be in violation of this Section when packaging:

(a) contains a health warning;

(b) is supplied to the retailer by a manufacturer, importer, or distributor, who has the required state, local, or tobacco tax license or permit, if applicable; and

(c) is not altered by the retailer in a way that is material to the requirements of this Section.

(5) An electronic-cigarette substance package that would be required to bear the warning in Subsection (1) or (2) of this Section but is too small or otherwise unable to accommodate a warning label with sufficient space to bear such information is exempt from compliance with the requirement provided:

(a) the information and specifications required in Subsection (1) and (2) of this Section appear on the carton or other outer container or wrapper if the carton, outer container, or wrapper has sufficient space to bear the information; or

(b) appear on a tag firmly and permanently affixed to the packaged electronic-cigarette substance.

(c) In the case of Subsection (5)(a) or (b), the carton, outer container, wrapper, or tag will serve as the location of the principal display panels.

R384-415-4. Prohibited Sales.

(1) The retailer shall be prohibited from selling an electronic-cigarette substance to the public that is labeled to the public as containing:

(a) additives that create the impression that an electronic-cigarette substance has a health benefit;

(b) additives that are associated with energy and vitality;

(c) illegal or controlled substances as identified in Section 58-37-3; and

(d) additives having coloring properties for emissions.

R384-415-5. Nicotine Content.

The retailer shall sell an electronic-cigarette substance to the consumer that is limited to 360 mg nicotine per container, and does not exceed a 24mg/mL concentration of nicotine.

R384-415-6. Packaging.

The retailer shall ensure that the packaging of an electronic-cigarette substance intended for sale to a consumer is certified as child resistant, and compliant with federal standards and law concerning child nicotine poisoning prevention.

R384-415-7. Product Quality.

As of August 8, 2019, the retailer shall sell an electronic-cigarette substance that has been approved by the United States Food and Drug Administration through a Pre-Market Tobacco application or Substantial Equivalent application.

R384-415-8. Record Keeping and Testing.

(1) The retailer shall provide the electronic-cigarette substances transaction statement to the Department or the local health department within five working days of a request. The retailer shall ensure that the transaction statement includes manufacturer certifications that:

(a) the nicotine content of an electronic-cigarette substance is compliant with Section R384-415-5;

(b) the packaging of an electronic cigarette-substance is child-resistant; and

(c) United States Food and Drug Administration Approval after August 8, 2019.

(2) The retailer shall provide evidence that supports the documents described in Subsection R384-415-8(1) to the Department or the local health department within 5 working days of a request.

(3) The retailer shall have access to the documents described in Subsections R384-415-8(1) and R384-415-8(2) for a period of two years after the retailer purchases the electronic-cigarette substance.

R384-415-9. Enforcement.

(1) The Department may enforce and seek penalties for the violation of public health rules including, the standards for electronic cigarettes set forth in this rule as prescribed in Sections 26-23-1 through 26-23-10.

(2) A local health department may enforce and seek penalties for the violation of the standards for electronic cigarettes set forth in this rule. A local health department shall have authority to enforce and seek penalties for violations of public health law including this rule as is found in Sections 26-23-1 through 26-23-10, 26A-1-108, 26A-1-114(1) and 26A-1-123.

(3) The Department or local health department is responsible to make a determination as to if a person holding a Utah State Tax Commission license to sell electronic cigarettes has violated the standards of this rule. If the Department or local health department makes such a determination it shall notify the Utah State Tax Commission to revoke the person's license as provided in Subsection 59-14-803(5).

(4) Administrative or civil enforcement of this rule by the Department or local health departments does not preclude criminal enforcement by a law enforcement agency and prosecution of any violation of the standards in this rule that can constitute a criminal offense under state law.

KEY: electronic cigarettes, nicotine, standards, Electronic Cigarette Regulation Act
December 29, 2016 **26-57-103**
59-14-803(5)

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 that provides medical, behavioral or dental care services 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.

The Department incorporates the October 1, 2016, versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs;

(9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;

(11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool found at http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(25) Medical Transportation Utah Medicaid Provider Manual;

(26) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment;

(27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;

(29) Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments;

(30) Podiatric Services Utah Medicaid Provider Manual;

(31) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(32) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(33) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;

(34) School-Based Skills Development Services Utah Medicaid Provider Manual;

(35) Section I: General Information Utah Medicaid Provider Manual;

(36) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(37) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(38) Vision Care Services Utah Medicaid Provider Manual;

(39) Women's Services Utah Medicaid Provider Manual;

(40) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and

(41) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

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.

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.

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 Hospital Services Utah Medicaid Provider Manual in effect at the time service is 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.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

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.

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(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 shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

(a) Rule R380-200;

(b) Rule R380-210;

(c) Rule R386-705;

(d) Rule R428-10; and

(e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

KEY: Medicaid

December 19, 2016	**26-1-5**
Notice of Continuation March 2, 2012	**26-18-3**
	26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-10A. Transplant Services Standards.
R414-10A-1. Introduction and Authority.

(1) This rule establishes standards and requirements for tissue and organ transplantation services for the State of Utah Medicaid Program.

(2) Title XIX of the Social Security Act allows coverage of transplantation services when there is no discrimination in the availability of services and high quality care is available to all eligible individuals.

(3) Section 26-18-2.3 grants the Department of Health discretion to fund transplantation services.

R414-10A-2. Definitions.

For purposes of Rule R414-10A:

(1) "Abstinence" means the documented non-use of any abusable substance by the patient.

(2) "Abusable substance" means any substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated. This includes, but is not limited to, over-the-counter medicines, prescription medicines, alcohol, tobacco (including nicotine-bearing vapor products), cannabis, benzodiazepines, narcotics, methadone, cocaine, amphetamines, opiates, tricyclic antidepressants, barbiturates, and street drugs.

(3) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(4) "Active substance use" means the current use (within the most recent six months) of any abusable substance or substances that can adversely impact treatment outcomes or treatment plan adherence. This may include the personal admission of substance use with a positive drug screen.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Department" means the Utah Department of Health.

(8) "Drug screen" means testing to identify the presence of one or more drugs or substances as stated in Subsection R414-10A-2(2), which can adversely impact treatment outcomes or treatment plan adherence.

(9) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(10) "Hematopoietic stem cell transplantation and bone marrow transplantation" means transplantation of cells from the bone marrow stem cells, peripheral blood stem cells, or cord blood stem cells to supplant the patient's bone marrow.

(11) "Intestine transplantation" means transplantation of the small bowel or both the small bowel and colon.

(12) "Medical necessity", for purposes of this rule, means a patient's medical condition that meets all the requirements and none of the contraindications for the type of transplantation requested.

(13) "Multi-organ transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same operative procedure.

(14) "Medicare-approved transplant center" means a center that meets Medicare's conditions of participation for transplant hospitals or, for purposes of this rule, is an approved National Marrow Donor Program (NMDP) bone marrow transplant center.

(15) "Patient" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider and is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(16) "Remission" means the lack of any evidence of the cancer on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for patients who are receiving maintenance chemotherapy.

(17) "Services" means the type of medical assistance specified in Subsections 1905(a)(1) through (24) of the Social Security Act and interpreted in 42 CFR 440, Subpart A.

(18) "Substance use treatment program" means a treatment program developed and conducted by an inpatient or outpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency and substance use disorder specialty facility specified in Section R432-101-4 and Rule R501-21.

(19) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, excluding skin, tendon, and bone.

R414-10A-3. Patient Eligibility Requirements for Coverage of Transplantation Services.

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet the requirements in this rule at the time the transplantation service is provided.

R414-10A-4. Program Access Requirements.

(1) Transplantation services may be provided only for eligible patients who meet the requirements in this rule and only for services covered under the Utah Medicaid program.

(2) Transplantation services may be provided only in a Medicare-approved transplant center.

(3) Transplantation services may be provided out-of-state in a Medicare-approved facility only when the service is not available in an approved facility in the state of Utah.

(4) All Utah transplant requirements and policies are applicable to in-state and out-of-state transplant services and facilities.

R414-10A-5. Service Coverage.

(1) Transplantation services are covered by the Utah Medicaid program only when requirements in this rule are met.

(2) Multi-organ transplantation services may be provided only when the requirements for each individual transplant are met.

(3) Repeat transplantations of the same tissues or organs may be covered only under Departmental review and approval based on requirements in this rule.

(4) The following transplants are covered when requirements in this rule are met:

(a) Cornea, heart, lung, kidney, liver, pancreas, intestine, bone marrow, hematopoietic stem cell.

(b) Some combinations of the above may also qualify.

(5) Emergency transplantations may be covered if all requirements are met.

R414-10A-6. Prior Authorization.

(1) Prior authorization (PA) may be required for any transplantation service.

(a) To determine if PA is required, refer to the Utah Medicaid Coverage and Reimbursement Code Lookup tool.

(2) The Department's evidence-based criteria may be used, when available, as part of the PA process.

(3) If PA is required, the request must include documentation that the patient meets the organ specific

requirements in this rule.

(4) The PA request for transplantation services must include:

(a) A description of condition needing transplantation;

(b) Transplantation treatment alternatives utilized previous to the transplant request;

(c) Transplantation treatment alternatives considered and discarded, including rationale for discarding;

(d) A comprehensive examination, evaluation and recommendation completed by a Board-Certified or Board-Eligible specialist and medical and surgical specialists in the field directly related to the patient's condition, which demonstrates the need for a transplant. The patient must also demonstrate the ability to tolerate the proposed transplant and subsequent treatment regimen;

(e) A comprehensive psycho-social evaluation of the patient that includes:

i. motivation for transplant;

ii. willingness and ability to follow a long-term treatment and follow-up regimen; and

iii. history of active substance use.

(f) If the patient is less than 18 years of age, a comprehensive psycho-social evaluation of the patient's parent or guardian that includes:

i. motivation for transplant;

ii. willingness and ability to follow a long-term treatment and follow-up regimen; and

iii. history of active substance use.

(g) A comprehensive psychiatric evaluation, if the patient has a history of mental illness.

(h) Documentation of a successfully completed treatment program or abstinence, if the patient has a history of substance use.

(i) Treatment program success and abstinence are supported by negative drug screens for a minimum of six months, with two negative drug screens in the most recent three months. The timing of the drug screens is in relation to the PA request date.

(j) If the history of substance use involves drugs other than those listed in this rule under Section R414-10A-2, then the drug screens must include the other substance upon drug testing availability.

(k) The patient may not be an active substance user as defined under Section R414-10A-2.

(l) Comprehensive infectious disease evaluation for a patient with a recent or current suspected infectious episode.

(m) All applicable hospital and clinic records.

(n) Completed cancer screening tests.

(o) All relevant laboratory and imaging studies.

(p) Documentation that the patient meets the eligibility and selection criteria for the transplant facility where the transplant will be performed.

(q) Any other documentation requested by PA or the Department's physician consultants.

(5) If incomplete documentation is received by the Department, the patient's case is pended until the requested documentation has been received.

(6) If a transplant requiring PA is performed without PA, reimbursement may be denied for all services related to the transplant up to the outlier threshold days for the specific type of transplant.

(7) Refer to the Section I: General Information Provider Manual for retroactive authorization for emergency transplant services.

R414-10A-7. Solid Organ Transplantation, Covered Services and Requirements.

(1) The following solid organ transplant services are covered. Minimum requirements for specific transplant services are shown. As required by 42 CFR 482, Subpart E, each transplant center must also have written selection criteria.

(2) All patients must be free of active infection. Liver transplants are excepted as noted.

(3) Liver.

(a) The patient must:

(i) have progressive, irreversible liver disease requiring transplant;

(ii) be free from active infection outside the hepatobiliary system;

(iii) not have acute, severe hemodynamic compromise at the time of transplantation if this compromises non-hepatic end-organs;

(iv) be free from significant pulmonary disease;

(v) be free from any significant cardiovascular disease; and

(vi) not have stage IV hepatic coma.

(4) Cornea.

(a) The patient must be free of other associated disease that may preclude visual improvement with transplant.

(5) Cardiac.

(a) The patient must:

(i) have irreversible and progressive cardiac disease with a life expectancy of one year or less without transplant or progressive pulmonary hypertension without other treatment options; and

(ii) be free from significant pulmonary disease, except pulmonary hypertension.

(6) Intestine.

(a) The patient must:

(i) have short bowel syndrome or irreversible and progressive small bowel disease requiring daily hyperalimentation without reasonable alternatives;

(ii) be free from significant pulmonary disease; and

(iii) be free from significant cardiovascular disease.

(7) Kidney.

(a) The patient must:

(i) have irreversible, progressive end-stage renal disease;

(ii) not have acute, severe hemodynamic compromise at the time of transplantation if this compromises non-renal end-organs;

(iii) be free from significant pulmonary disease; and

(iv) be free from any significant cardiovascular disease.

(8) Lung.

(a) The patient must:

(i) not have acute, severe hemodynamic compromise at the time of the transplantation if this compromises non-pulmonary end-organs;

(ii) be free from significant cardiovascular disease; and

(iii) demonstrate abstinence from tobacco use within the last 6 months.

(9) Pancreas.

(a) The patient must:

(i) have type I diabetes mellitus;

(ii) not have acute, severe hemodynamic compromise at the time of the transplantation if this compromises end-organs;

(iii) not have active peptic ulcer disease;

(iv) be free from significant cardiovascular disease; and

(v) be free from significant pulmonary disease.

(10) Multi-organ transplants.

(a) Kidney/pancreas, liver/kidney, cardiac/lung, intestine/liver, and other multi-organ transplants may be considered;

(i) each case is reviewed individually as to medical necessity and appropriateness; and

(ii) complete documentation, including justification and outcomes, must be provided.

R414-10A-8. Solid Organ Transplantation, Non-Covered Services.

(1) Transplants requiring prior authorization performed without prior authorization. (Refer to the Section I: General Information Provider Manual for request for retroactive authorization for emergency transplant services.)

(2) Transplant for patients who did not qualify for Medicaid benefits at the time of transplantation. (Retroactive Medicaid qualification may be an exception.)

(3) Transplants which are experimental or investigational in nature.

(4) Transplant of beta cells or other pancreas cells not part of a pancreatic organ transplantation.

(5) Transplant of cells or tissues into the coronary arteries, myocardium, central nervous system, or spinal cord.

(6) "Bridge-to-transplant" devices for heart transplant:

(a) Temporary or implanted ventricular assist devices with the exception of intra-aortic balloon assist devices;

(b) Temporary or implanted biventricular assist devices; or

(c) Temporary or implanted mechanical heart.

(7) Transplants to patients with:

(a) Malignant neoplasm with a high risk for reoccurrence and non-curable malignancy (excluding localized skin cancer).

(b) Chronic illness with one year or less life expectancy.

(c) Limited, irreversible rehabilitation potential.

(8) All other conditions not specifically listed as covered in the rule.

R414-10A-9. Hematopoietic Stem Cell Transplantation (HSCT), Covered Services and Requirements.

(1) Allogeneic and syngeneic hematopoietic stem cell transplantation may be approved only when the patient has a suitable HLA-matched donor and one of the covered conditions is present.

(a) A search of related family members, unrelated persons, or both to find a suitable donor is a covered service.

(2) Patient must have adequate marrow and lack of marrow involvement of primary malignancy if autologous transplant.

(3) Patient must be free from any active infection.

(4) Allogeneic Hematopoietic Stem Cell Transplantation (ASCT) is covered for:

(a) Leukemia, leukemia in remission, or aplastic anemia; or

(b) Severe Combined Immunodeficiency Disease (SCID) and for the treatment of Wiskott-Aldrich syndrome.

(5) Autologous Hematopoietic Stem Cell Transplantation (AuSCT) is covered for:

(a) Acute leukemia in remission with a high probability of relapse and has no Human Leucocyte Antigens (HLA)-matched;

(b) Resistant non-Hodgkin's lymphomas or those presenting with poor prognostic features following an initial response;

(c) Recurrent or refractory neuroblastoma; and

(d) Advanced Hodgkin's disease with failed conventional therapy and has no HLA-matched donor.

(e) Single AuSCT is only covered for Durie-Salmon Stage II or III that fit the following requirements:

(i) Newly diagnosed or responsive multiple myeloma. This includes those patients with previously untreated disease, those with at least a partial response to prior chemotherapy (defined as a 50 percent decrease either in measurable paraprotein (serum, urine or both) or in bone marrow infiltration, sustained for at least one month), and those in responsive relapse; and

(ii) adequate cardiac, renal, pulmonary, and hepatic function.

(f) When recognized clinical risk factors are employed to select patients for transplantation, High Dose Melphalan (HDM) together with AuSCT is medically reasonable and necessary for any age group with primary Amyloid Light (AL) chain amyloidosis who meet the following criteria:

(i) Amyloid deposition in two or fewer organs; and

(ii) Cardiac left ventricular Ejection Fraction (EF) greater than 45 percent.

R414-10A-10. HSCT Transplantation, Non-Covered Services.

(1) HSCT is not covered as treatment for multiple myeloma.

(2) AuSCT is not covered for:

(a) Acute leukemia not in remission;

(b) Chronic granulocytic leukemia;

(c) Solid tumors (other than neuroblastoma);

(d) Tandem transplantation (multiple rounds of AuSCT) for patients with multiple myeloma;

(e) Non-primary AL amyloidosis; or

(f) Primary AL amyloidosis for patients who are at least 64 years of age.

(3) All other conditions not specifically listed as covered in this rule.

R414-10A-11. Requests for Non-Covered Transplantation Services.

Requests for non-covered services are considered based on evidence submitted as to the efficacy of the requested services. These requests are reviewed on a case-by-case basis and require Medicaid Director or designee approval. Evidence types may include, but are not limited to:

(1) Evidence published in peer-reviewed medical journals listed on the Centers for Medicare and Medicaid Services (CMS) website.

(2) Evidence of acceptable survival rates with the proposed protocol in groups with similar clinical characteristics to the patient:

(a) The current survival rate threshold is at least 75 percent one-year survival and at least 55 percent three-year survival; or

(b) Similar characteristics include age, tumor type, tumor size, resection status, presence of metastases, etc.

(3) Study size with sufficient number of individuals for statistical analysis; or

(4) Evidence that the proposed protocol is a less costly alternative to other potential treatment protocols.

KEY: Medicaid
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Notice of Continuation January 24, 2012 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-508. Requirements for Transfer of Bed Licenses.
R414-508-1. Introduction and Authority.

(1) This rule implements requirements that a Medicaid certified nursing care facility program must meet to transfer licensed bed capacity for Medicaid certified beds to another entity.

(2) Sections 26-18-3, 26-18-5, and 26-18-505 authorize this rule.

R414-508-2. Definitions.

As used in this rule:

(1) "Bureau of Health Facility Licensing, Certification and Resident Assessment" (BHFLCRA) within the Department of Health is the entity that evaluates nursing care facilities to comply with state and federal regulations.

(2) "Bed License" is the state authorization given by BHFLCRA to provide nursing care facility services to an individual resident. BHFLCRA only issues licenses to a nursing care facility program to provide services for several individuals. The number of individuals for which a nursing care facility program can provide service equals the total licensed beds held by the licensee.

(3) "Current Owner" is any one of or combination of the following: owner of a building from which a nursing care facility program operates, owner of land on which a nursing care facility program operates, owner of a nursing care facility program licensed by the BHFLCRA, owner of Medicaid certification, lessor of the building, lessor of the land, mortgagor of the building, mortgagor of the land, the management team responsible for executing the operations of a nursing care facility program, a holder of a lien security interest in the land, a holder of a lien security interest in the building, and a holder of a lien security interest in the business operation.

(4) "Medicaid Certification" is the authorization to provide services outlined in the Medicaid State Plan in accordance with Section R414-27-1;

(5) "Transfer" is a change of ownership due to sale, lease, or mortgage.

(6) "Transfer Agreement" is a contract for a transfer of bed licenses.

(7) "Transferor" is the entity or nursing care facility program transferring one or more Medicaid beds to another entity or nursing care facility program.

(8) "Transferee" is the entity or nursing care facility program receiving one or more Medicaid beds from the Transferor.

R414-508-3. Bed License Transfer Requirements for the Transferor.

(1) A nursing care facility program shall meet the requirements of Rule R414-27 to fulfill the transfer requirements found in Subsection 26-18-505(2).

(2) Pursuant to Subsection 26-18-505(2), a nursing care facility program shall demonstrate its intent to transfer bed licenses by providing written notice to the Division of Medicaid and Health Financing in accordance with timing specified in Section 26-18-505. The transferring nursing care facility program or entity shall use the "Notice of Medicaid Bed Transfer" form to request the transfer.

(3) The nursing care facility program shall include all necessary information on the "Notice of Medicaid Bed Transfer" form. If the form or supporting documentation is deficient, the incomplete notice shall be returned to the requestor.

(4) The notice date shall be the postmark date of a complete "Notice of Medicaid Bed Transfer" form mailed to the Division of Medicaid and Health Financing.

R414-508-4. Bed License Transfer Requirements for the Transferee.

Pursuant to Subsection 26-18-505(3), an entity that receives bed licenses from a nursing care facility program must provide written notice to the Division of Medicaid and Health Financing in accordance with timing specified in Section 26-18-505. The receiving nursing care facility program or entity shall use the "Request for Medicaid Certification of Transferred Beds" form.

(1) The nursing care facility program shall include all necessary information on the "Request for Medicaid Certification of Transferred Beds" form. If the form or supporting documentation is deficient, the incomplete notice shall be returned to the requestor.

(2) The notice date shall be the postmark date of a complete "Request for Medicaid Certification of Transferred Beds" form mailed to the Division of Medicaid and Health Financing.

(3) If the receiving nursing care facility or entity receives bed licenses from more than one nursing care facility or entity and wants to have the multiple beds certified at the same time, the transferee shall complete a request form for each different transferring entity and submit the request forms at the same time.

R414-508-5. Expiration and Forfeiture of Bed Licenses.

Pursuant to Subsection 26-18-505(3), if the receiving entity does not obtain Medicaid certification within three years of the effective date of the transfer, the transferred bed licenses expire and the receiving entity forfeits the bed licenses available through the transfer. The transferring nursing care facility program does not regain any right to the transferred beds that have expired.

KEY: Medicaid
December 7, 2016 26-1-3
Notice of Continuation May 30, 2013 26-18-505

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-5. Emergency Medical Services Training and Certification Standards.
R426-5-100. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a to provide uniform minimum standards to be met by those providing emergency medical services in the State of Utah; and for the training, certification, and recertification of individuals who provide emergency medical service and for those providing instructions and training to pre-hospital emergency medical care providers.

(2) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-5-200. Scope of Practice.

(1) The Department may certify as an EMR, EMT, AEMT, EMT-IA Paramedic, or EMD an individual who meets the initial certification requirements in this rule.

(2) The Committee adopts as the standard for EMR, EMT, AEMT, EMT-IA, or Paramedic training and competency in the state, the following United States Department of Transportation's National Emergency Medical Services Education Standards.

(3) An EMR, EMT, AEMT, or Paramedic may perform the skills as described in the EMS National Education Standards, to their level of certification, as adopted in this section.

(4) Per Utah Code section 41-6a-523 persons authorized to draw blood/immunity from liability and section 53-10-405 DNA specimen analysis -- Saliva sample to be obtained -- Blood sample to be drawn by a professional. Acting at the request of a peace officer a paramedic may draw field blood samples to determine alcohol or drug content and for DNA analysis. Acting at the request of a peace officer an AEMT may draw field blood samples to determine alcohol or drug content and for DNA analysis if they have received certification pursuant to administrative rule R438-12. A person authorized by this section to draw blood samples may not be held criminally or civilly liable if drawn in a medically acceptable manner.

R426-5-300. Certification.

(1) The Department may certify an EMR, EMT, EMT-IA, AEMT, Paramedic, or EMD for a four-year period.

(2) An individual who wishes to become certified as a EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD shall:

(a) successfully complete a Department-approved EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD course as described in this rule;

(b) be able to perform the functions listed in the National EMS Education Standards adopted in this rule as verified by personal attestation and successful accomplishment by certified EMS Instructors during the course;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification;

(d) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(e) submit to and pass a background investigation, including an FBI background investigation if the applicant has not resided in Utah for the past consecutive five years;

(f) maintain and submit documentation of having completed a Department approved CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Healthcare Provider Cardiopulmonary Resuscitation (CPR) and Emergency Cardiac Care (ECC); and

(g) submit TB test results as per R426-5-700.

(3) Age requirements:

(a) EMR may certify at 16 years of age or older; and

(b) EMT, AEMT, EMT-IA and Paramedic may certify at 18 years of age or older.

(4) Within 120 days after the official course end date the applicant shall successfully complete the Department written and practical EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD examinations, or reexaminations, if necessary.

(5) Test development, the Department shall:

(a) develop or approve written and practical tests for each certification;

(b) establish the passing score for certification and recertification written and practical tests;

(c) the Department may administer the tests or delegate the administration of any test to another entity; and

(d) the Department may release only to the individual who took the test and to persons who have a signed release from the individual who took the test:

(i) whether the individual passed or failed a written or practical test; and

(ii) the subject areas where items were missed on a written or practical test.

(6) An individual who fails any part of the EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification or recertification written or practical examination may retake the examination twice without further course work.

(7) If the individual fails both re-examinations, they shall take a complete EMR, EMT, AEMT, Paramedic, or EMD training course respective to the certification level sought to be eligible for further examination.

(8) The individual may retake the course as many times as they desire, but may only take the examinations three times for each completed course. If an individual retakes the course because of failure to pass the examinations, the individual shall pass both the practical and written test administered after completion of the new course.

(9) An individual who wishes to enroll in an AEMT, EMT-IA, or Paramedic course shall have as a minimum a Utah EMT certification. This Certification shall remain current until new certification level is obtained.

(10) The Department may extend the time limits for an individual who demonstrates that the inability to meet the requirements within the 120 days was due to circumstances beyond the applicant's control, such as for documented medical circumstances that prevent completion of testing, military deployment out of the state, extreme illness in the immediate family, or the like.

R426-5-400. Certification at a Lower Level.

(1) An individual who has taken a Paramedic course, but has not been recommended for certification, may request to become certified at the AEMT levels if:

(a) the paramedic course coordinator submits to the Department a favorable letter of recommendation stating that the individual has successfully obtained the knowledge and skills of the AEMT level as required by this rule; and

(b) the individual successfully completes all requirements for an AEMT.

R426-5-500. Certification Challenges.

(1) The Department may certify as an EMT or AEMT; a registered nurse licensed in Utah, a nurse practitioner licensed in Utah, a physician assistant licensed in Utah, or a physician licensed in Utah who:

(a) is able to demonstrate knowledge, proficiency and competency to perform all the functions listed in the National EMS Education Standards as verified by personal attestation and successful demonstration to a currently certified course

coordinator and an off-line medical director of all cognitive, affective, and psychomotor skills listed in the National EMS Education Standards;

(b) has a knowledge of:

(i) medical control protocols;

(ii) state and local protocols; and

(iii) the role and responsibilities of an EMT or AEMT respectively.

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for adult and pediatric healthcare provider CPR and ECC; and

(d) is 18 years of age or older.

(e) each level shall be challenged sequentially and individually

(2) To become certified, the applicant shall:

(a) submit three letters of recommendation from health care providers attesting to the applicant's patient care skills and abilities;

(b) submit a favorable recommendation from a currently certified course coordinator attesting to competency of all knowledge and skills contained within the National EMS Education Standards;

(c) submit the applicable fees and a completed application, including social security number, signature, and, proof of current Utah license as a Registered Nurse, a Physician Assistant, or a Medical Doctor;

(d) within 120 days after submitting the challenge application, successfully complete the Department written and practical EMT examinations, or reexaminations, if necessary;

(e) the Department may extend the time limit for an individual who demonstrates the inability to meet the requirements within 120 days was due to circumstances beyond the applicant's control;

(f) submit to and pass a background screening clearance as per R426-5-2700; and

(g) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to submitting the application.

R426-5-600. Recertification Requirements.

(1) The Department may recertify an individual for a four-year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification shall:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to and pass a background screening clearance as per R426-5-2700;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Adult and Pediatric Healthcare Provider CPR and ECC. CPR shall be kept current during certification;

(d) submit TB test results as per R426-5-700;

(e) successfully complete the Department applicable written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration; and

(f) provide documentation of completion of Department-approved CME requirements.

(3) The EMR, EMT, AEMT, EMT-IA and Paramedic shall complete the required CME hours, as outlined in the department's Recertification Protocol for EMS Personnel manual and in accordance with the National EMS Education Standards. The hours shall be completed throughout the prior four years.

(4) As well as requirements in (2)(c) The following course completion documentation is required for the specific certification level and may be included in the CME required hours:

(a) EMR 52 hours of CME.

(b) EMT 98 hours of CME.

(c) AEMT 108 hours of CME.

(d) EMT-IA 108 hours of CME.

(e) Paramedic 144 hours of CME; and,

(f) EMD 48 hours of CME.

(5) An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD may complete CME hours through various methodologies, but 30 percent of the CME hours shall be practical hands-on training.

(6) All CME shall be related to the required skills and knowledge of the EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD's level of certification.

(7) The CME Instructors need not be certified EMS instructors, but shall be knowledgeable in the subject matter.

(8) The EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD shall complete and provide documentation of demonstrating the psychomotor skills listed in the current National EMS Education Standards at their level of certification.

(9) An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD who is affiliated with an EMS organization should have the organization's designated training officer submit a letter verifying the completion of the recertification requirements. An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD who is not affiliated with a licensed or designated EMS provider shall submit verification of all recertification requirements directly to the Department.

(10) An AEMT, EMT-IA or Paramedic shall submit a letter from a certified off-line medical director recommending the individual for recertification and verifying the individual has demonstrated proficiency in the psychomotor skills listed in the current National EMS Education Standards at their level of certification.

(11) Each EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD is individually responsible to complete and submit all required recertification material to the Department at one time, no later than 30 days and no earlier than one year prior to the individual's current certification expiration date. If the Department receives incomplete or late recertification materials, the Department may not be able to process the recertification before the certification expires. The Department processes recertification material in the order received.

(12) A licensed or designated EMS provider, or a Department approved entity who provides CME may compile and submit recertification materials on behalf of an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD; however, the individual EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD remains responsible for a timely and complete submission.

(13) The Department may shorten recertification periods. An EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD whose recertification period is shortened shall meet the CME requirements in each of the required and elective subdivisions on a prorated basis by the expiration of the shortened period.

(14) The Department may not lengthen certification periods more than the four-year certification, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when certification expired. If this happens, the individual shall recertify in accordance with Utah Code 39-1-64.

R426-5-700. TB Test Requirements.

(1) All levels of certification and recertification except EMD shall submit a statement from a physician or other health

care provider, confirming the applicant's negative results of a Tuberculin Skin Test or equivalent (TB test) examination conducted within the prior year, or complete the following requirements:

(a) if the test is positive, and there is no documented history of prior Latent TB Infection (LTBI) treatment, the applicant shall see his primary care physician for a chest x-ray (CXR) in accordance with current Center for Disease Control and Prevention (CDC) guidelines and further evaluation; and

(b) Results of CXR and medical history shall be submitted to the Department.

(2) If the CXR is negative, the applicant's medical history will be reviewed by the State EMS Medical Director. For individuals at high risk for developing active TB, treatment will be strongly recommended.

(3) If the CXR is positive, the applicant is considered to be suspect Active TB. Should the diagnosis be confirmed:

(a) Completion of treatment or release by an appropriate physician will be required prior to certification; and

(b) each such case will be reviewed by the State EMS Medical Director.

(4) If an applicant who is required to get treatment refuses the treatment, the Department may deny certification.

(5) A TB test should not be performed on a person who has a documented history of either a prior positive TB test or prior treatment for tuberculosis. The applicant shall instead have a CXR in accordance with current CDC guidelines and provide documentation of negative CXR results to the department.

(6) If the applicant has had prior treatment for active TB or LTBI, the applicant shall provide documentation of this treatment prior to certification. Documentation of this treatment will be maintained by the Department, and needs only to be provided once.

(7) Each such case will be reviewed by the State EMS Medical Director.

R426-5-800. Reciprocity.

(1) The Department may certify an individual as an EMR, EMT, AEMT, Paramedic, or EMD an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience shall:

(a) Submit the applicable fees and a completed application, including social security number and signature, to the Department and complete all of the following within 120 days of submitting the application;

(b) submit to and pass a background screening clearance as per R426-5-2700;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Healthcare Provider CPR and ECC;

(d) submit TB test results as per R426-5-700;

(e) successfully complete the Department written and practical EMR, EMT, AEMT, Paramedic, or EMD examinations, or reexaminations, if necessary;

(f) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs; and

(g) provide documentation of completion of 25 hours of continuing medical education (CME) within the prior year. EMDs shall provide documentation of completion of 12 hours of CME within the prior year

(3) The Department may certify as an EMD an individual certified by the National Academy of Emergency Medical Dispatch (NAEMD) or equivalent. An individual seeking reciprocity for certification in Utah based on NAEMD or equivalent certification shall:

(a) Submit documentation of current NAEMD or equivalent certification.

(b) maintain and submit documentation of having completed within the prior two years;

(i) a Department approved CPR course that is consistent with the most current version of the American Heart Association Guidelines for CPR and ECC; and

(ii) a minimum of a two-hour course in critical incident stress management (CISM).

(4) An individual who fails the written or practical EMR, EMT, or AEMT examination three times will be required to complete a Department approved EMR, EMT, or AEMT, course respective to the certification level sought.

(5) A candidate for paramedic reciprocity who fails the written or practical examinations three times can request further consideration of reciprocity after five years if the candidate has worked for an out of state EMS provider and can verify steady employment as a paramedic for at least three of the five years.

R426-5-900. Lapsed Certification.

(1) An individual whose EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification has expired for less than one year may, within one year after expiration, complete all recertification requirements, pay a late recertification fee, and successfully pass the written certification examination to become certified. The individual's new expiration date will be four years from the previous expiration date.

(2) An individual whose certification has expired for more than one year shall:

(a) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in patient care skills at the certification level;

(b) successfully complete the applicable Department written and practical examinations;

(c) complete all recertification requirements; and

(d) the individual's new expiration date will be four years from the completion of all recertification materials.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD until the individual completes the recertification process.

R426-5-1000. Transition to 2009 National EMS Education Standards.

(1) The Department adopts the 2009 National Education Standards as noted in this rule resulting in a need for specific dates for a transition period. These dates shall be as follows:

(a) EMT Basic to EMT January 1, 2012 to January 1, 2016; and

(b) EMT Intermediate to Advanced EMT, October 1, 2011 to September 30, 2013.

(2) Transition for EMT-B to EMT will be accomplished through the Department's written examination as part of the Individual's recertification process during the transition period.

(3) Transition for EMT-I and EMT-IA to AEMT will be accomplished through the Department's written AEMT transition examination during the transition period.

(4) Transition will not change the Individual's recertification date.

(5) During the transition period:

(a) EMT-I and EMT-IA will be deemed equivalent to AEMT certification, in accordance with the respective licensed or designated EMS provider's waivers; and

(b) EMT-B will be deemed equivalent to EMT

certification.

(c) EMT-IA may maintain level of certification as long as employed by a licensed EMT-IA provider.

(6) After the deadline of September 31, 2013 of the AEMT transition period:

(a) an EMT-I who has not yet transitioned will be deemed an EMT, and;

(b) an EMT-IA who is not working for a licensed EMT-IA provider shall be deemed an AEMT.

R426-5-1100. Emergency Medical Care During Clinical Training.

A student enrolled in a Department-approved training program may, under the direct supervision of the course coordinator, an instructor in the course, or a preceptor for the course, perform activities delineated within the training curriculum that otherwise require certification to perform.

R426-5-1200. Instructor Requirements.

(1) The Department may certify as an EMS Instructor an individual who:

(a) meets the initial certification requirements in R426-5-1300; and

(b) is currently certified in Utah as an EMR, EMT, AEMT,EMT-IA, Paramedic, or EMD.

(2) The Committee adopts the United States Department of Transportation's "EMS Instructor Training Program as the standard for EMS Instructor training and competency in the state, which is adopted and incorporated by reference.

(3) An EMS instructor may only teach up to the certification level to which the instructor is certified. An EMS instructor who is only certified as an EMD may only teach EMD courses.

(4) An EMS instructor shall comply with the teaching standards and procedures in the EMS Instructor Manual.

(5) An EMS instructor shall maintain the EMS certification for the level the instructor is certified to teach. If an individual's EMS certification lapses, the instructor certification is invalid until EMS certification is renewed.

(6) The Department may waive a particular instructor certification requirement if the applicant can demonstrate the applicant's training and experience requirements are equivalent or greater to what are required in Utah.

R426-5-1300. Instructor Certification.

(1) The Department may certify an individual who is an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD as an EMS Instructor for a two-year period.

(2) An individual who wishes to become certified as an EMS Instructor shall:

(a) Submit an application and pay all applicable fees;

(b) submit three letters of recommendation regarding EMS skills and teaching abilities;

(c) submit documentation of 15 hours of teaching experience;

(d) successfully complete all required examinations; and

(e) successfully complete the Department-sponsored initial EMS instructor training course.

(3) An individual who wishes to become certified as an EMS Instructor to teach EMR, EMT, AEMT, or paramedic courses shall also:

(a) Provide documentation of 30 hours of patient care within the prior year.

(4) The Department may waive portions of the initial EMS instructor training courses for previously completed Department-approved instructor programs.

R426-5-1400. Instructor Recertification.

(1) An EMS instructor who wishes to recertify as an instructor shall:

(a) maintain current EMS certification; and

(b) attend the required Department-approved recertification training at least once in the two year recertification cycle;

(2) Submit an application and pay all applicable fees.

R426-5-1500. Instructor Lapsed Certification.

(1) An EMS instructor whose instructor certification has expired for less than two years may again become certified by completing the recertification requirements.

(2) An EMS instructor whose instructor certification has expired for more than two years shall complete all initial instructor certification requirements and reapply as if there were no prior certification.

R426-5-1600. Training Officer Certification.

(1) The Department may certify an individual who is a certified EMS instructor as a training officer for a two-year period.

(2) An individual who wishes to become certified as an EMS Training officer shall:

(a) Be currently certified as an EMS instructor;

(b) successfully complete the Department's course for new training officers;

(c) submit an application and pay all applicable fees; and

(d) submit biennially a completed and signed "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the then current Training Officer Manual.

(3) A training officer shall maintain EMS instructor certification to retain training officer certification.

(4) An EMS training officer shall abide by the terms of the Training Officer Contract, and comply with the standards and procedures in the Training Officer Manual as incorporated into the respective Training Officer Contract.

R426-5-1700. Training Officer Recertification.

(1) A training officer who wishes to recertify as a training officer shall:

(a) Attend a training officer seminar at least once in the two year recertification cycle;

(b) maintain current EMS instructor and EMS certification;

(c) submit an application and pay all applicable fees;

(d) successfully complete any Department-examination requirements; and

(e) submit biennially a completed and signed new "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the current training officer manual.

R426-5-1800. Training Officer Lapsed Certification.

(1) An individual whose training officer certification has expired for less than two years may again become certified by completing the recertification requirements. The individual's new expiration date will be two years from the old expiration date.

(2) An individual whose training officer certification has expired for more than two year shall complete all initial training officer certification requirements and reapply as if there were no prior certification.

R426-5-1900. Course Coordinator Certification.

(1) The Department may certify an individual as an EMS course coordinator for a two-year period.

(2) An individual who wishes to certify as a course coordinator shall:

(a) Be certified as an EMS instructor;

(b) be a co-coordinator of record for one Department-approved course with a certified course coordinator;

(c) submit a written evaluation and recommendation from the course coordinator in the co-coordinated course;

(d) complete certification requirements within one year of completion of the Department's course for new course coordinators;

(e) submit an application and pay all applicable fees;

(f) complete the Department's course for new course coordinators;

(g) sign and submit annually the "Course Coordinator Contract" to the Department agreeing to abide to the standards and procedures in the then current Course Coordinator Manual; and

(h) maintain EMS instructor certification.

(3) A Course Coordinator may only coordinate courses up to the certification level to which the course coordinator is certified. A course coordinator, who is only certified as an EMD, may only coordinate EMD courses.

(4) A course coordinator shall abide by the terms of the "Course Coordinator Contract" and comply with the standards and procedures in the Course Coordinator Manual as incorporated into the "Course Coordinator Contract."

(5) A Course Coordinator shall maintain an EMS Instructor certification and the EMS certification for the level that the course coordinator is certified to coordinate. If an individual's EMS certification lapses, the Course Coordinator certification is invalid until EMS certification is renewed.

R426-5-2000. Course Coordinator Recertification.

(1) A course coordinator who wishes to recertify as a course coordinator shall:

(a) Maintain current EMS instructor and EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD certification;

(b) coordinate or co-coordinate at least one Department-approved course every two years;

(c) attend a course coordinator seminar at least once in the two year recertification cycle;

(d) submit an application and pay all applicable fees; and

(e) sign and submit biannually a Course Coordinator Contract to the Department agreeing to abide by the policies and procedures in the then current Course Coordinator Manual.

R426-5-2100. Course Coordinator Lapsed Certification.

(1) An individual whose course coordinator certification has expired for less than two year may again become certified by completing the recertification requirements. The individual's new expiration date will be two years from the recertification date.

(2) An individual whose course coordinator certification has expired for more than two year

must complete all initial course coordinator certification requirements and reapply as if there were no prior certification.

R426-5-2200. Course Approvals.

(1) A course coordinator offering EMS training to individuals who wish to become certified as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD shall obtain Department approval prior to initiating an EMS training course. The Department shall approve a course if:

(a) The applicant submits the course application and fees no earlier than 90 days and no later than 30 days prior to commencing the course;

(b) the applicant has sufficient equipment available for the training or if the equipment is available for rental from the Department;

(c) the Department finds the course meets all the Department rules and contracts governing training;

(d) the course coordinators and instructors hold current respective course coordinator and EMS instructor certifications; and

(e) the Department has the capacity to offer the applicable examinations in a timely manner after the conclusion of the course.

R426-5-2300. Paramedic Training Institutions Standards Compliance.

(1) A person shall be authorized by the Department to provide training leading to the certification of a paramedic.

(2) To become authorized and maintain authorization to provide paramedic training, a person shall:

(a) Enter into the Department's standard paramedic training contract; and

(b) adhere to the terms of the contract, including the requirement to provide training in compliance with the Course Coordinator Manual and the Utah Paramedic Training Program Accreditation Standards Manual.

R426-5-2400. Off-line Medical Director Requirements.

(1) The Department may certify an off-line medical director for a four-year period.

(2) An off-line medical director shall be:

(a) a physician actively engaged in the provision of emergency medical care;

(b) familiar with the Utah EMS Systems Act, Title 26, Chapter 8a, and applicable state rules; and

(c) familiar with medical equipment and medications required.

R426-5-2500. Off-line Medical Director Certification.

(1) An individual who wishes to certify as an off-line medical director shall:

(a) have completed an American College of Emergency Physicians or National Association of Emergency Medical Services Physicians medical director training course or the Department's medical director training course within twelve months of becoming a medical director;

(b) submit an application and;

(c) pay all applicable fees.

(2) An individual who wishes to recertify as an off-line medical director shall:

(a) attend the medical directors annual workshop at least once every four years

(b) submit an application; and

(c) pay all applicable fees.

R426-5-2600. Epinephrine Auto-Injector Use.

(1) Any qualified entities or qualified adults as defined in 26-41-102 in accordance with 26-41-107 shall receive training approved by the Department.

(a) The training shall include:

(i) recognition of life threatening symptoms of anaphylaxis;

(ii) appropriate administration of an epinephrine auto-injector;

(iii) proper storage of an epinephrine auto-injector;

(iv) disposal of an epinephrine auto-injector; and

(v) an initial and annual refresher course.

(2) The annual refresher course requirement may be waived if:

(a) The qualified entities or qualified adults are currently licensed or certified at the EMR or higher level by the State of Utah, or

(b) The approved trainings are the Red Cross and American Heart Association epinephrine auto-injector modules.

(3) Training in the school setting shall be based on approved Department trainings found on http://www.choosehealth.utah.gov/prek-12/school-nurses.php

and provided in accordance with 26-41-104.

(4) All epinephrine auto injectors shall be stored and disposed of following the manufacturer's specifications.

R426-5-2700. Background Screening Clearance for EMS Certification.

(1) The Department shall conduct a background screening on each individual who seeks to certify or recertify as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD. The Department shall approve EMS certification or recertification upon successful completion of a background screening. Background clearance indicates the individual does not pose an unacceptable risk to public health and safety.

(2) The Department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6- 209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1; and

(g) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions.

(3) If the Department determines an individual is not eligible for certification or recertification based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(4) If the Department determines an individual is not eligible for certification or recertification based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

(5) The individual seeking certification or recertification shall submit the completed application, including fees, prior to submission of finger prints.

(6) Exclusion from certification or recertification.

(a) Criminal Convictions or Pending Charges:

(i) If an individual has been convicted, has pleaded no contest, is subject to a plea in abeyance, or a diversion agreement, for the following offenses within the past 15 years, they shall not be approved for certification or recertification:

(A) any felony or class A under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(B) any felony or class A under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code excluding sections 103 and 108;

(C) any felony or class A or B under the following Utah Criminal Codes:

(I) 76-9-301.8, Bestiality;

(II) 76-9-702.1, Sexual Battery; and

(III) 76-9-702.5, Lewdness Involving Child.

(ii) If an individual has been convicted or has pleaded no contest for the following offenses, 15 years have passed since the last conviction and the offense cannot be expunged they shall be considered for certification or recertification:

(A) any felony or class A under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(B) any felony or class A under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code excluding sections 103 and 108;

(C) any felony or class A or B under the following Utah Criminal Codes:

(I) 76-9-301.8, Bestiality;

(II) 76-9-702.1, Sexual Battery; and

(III) 76-9-702.5, Lewdness Involving Child.

(iii) If an individual has been convicted, has pleaded no contest, is subject to a plea in abeyance, or a diversion agreement, for the following offenses, they shall be considered for certification or recertification:

(A) any felony or class A under Utah Criminal Code not listed in R426-5-2700(6)(a)(i).

(B) any class B or C under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(C) any felony, class A under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(D) any felony or class A under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(E) any felony or class A under Title 76, Chapter 8, Offenses Against the Administration of Government, Utah Criminal Code;

(F) any felony, class A under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(G) any felony, class A, B or C under the following Utah Criminal Codes:

(I) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(II) 76-10-1301 to 1314, Prostitution;

(III) any felony or class A under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

(H) any felony or class A or B under Utah Motor Vehicles Traffic Code 41-6a-502 and 517.

(I) any felony or class A or B under Utah Occupations and Professions Utah Controlled Substances Act 58-37.

(J) any felony or class A or B under Alcoholic Beverage Control Act 32B-4-409.

(K) any criminal conviction or pattern of convictions that may represent an unacceptable risk to public health and safety.

(iv) An individual seeking certification who has been convicted or has pleaded no contest, is subject to a plea in abeyance, a diversion agreement, a warrant for arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(iii), shall be considered for certification.

(v) A certified EMS individual who is subject to a warrant of arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(iii), and after an investigation and Peer Review Board process as established in R426-5-2900, the Department may issue recertification, or suspend or revoke a certification, or place a certification on probation.

(vi) A certified EMS individual who is subject to a warrant of arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(i), shall immediately have the individuals EMS certification placed on restriction pending the outcome of a CCEU investigation as per the process established in R426-5-2900.

(b) Juvenile Records.

(i) As required by Utah Code Subsection 26-8a-310(5)(b), juvenile court records shall be reviewed if an individual is:

(A) under the age of 28; or

(B) over the age of 28 and has convictions or pending charges identified in R426-5-2600(6)(a).

(ii) Adjudications by a juvenile court may exclude the individual from certification or recertification if the

adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor any of the identified offenses in R426-5-2700(6)(a).

(c) Non-Criminal Records.

(i) The Department may deny certification or recertification based on a supported finding from:

(A) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(B) child abuse or neglect findings described in Section 78A-6-323;

(C) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(ii) The Department may deny certification or recertification based on a finding from licensing records of individuals licensed by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions.

(d) Review of Relevant Information.

(i) Results of background screening review, as listed above in R426-5-2700(6)(a)(ii)-(iii), (b) or (c) may be reviewed to determine under what circumstance, if any, the individual may be granted certification or recertification. The following factors may be considered:

(A) types and number;

(B) passage of time;

(C) surrounding circumstances;

(D) intervening circumstances; and

(E) steps taken to correct or improve.

(ii) The Department shall rely on relevant information identified in R426-5-2700(2) as conclusive evidence and may deny certification or recertification based on that information.

(e) Appeal of Department certification decision.

(i) A certified EMS individual may appeal a Department certification decision as listed in R426-5-2700(6)(d)(i)to the CCEU as per the process established in R426-5-2900.

(7) A certified EMS individual who has been arrested, charged, or convicted shall notify the Department CCEU and all employers or affiliated entities who utilize the EMS individual's certification within 7 business days. The certified EMS individual shall also notify the Department of all entities they work for or are affiliated with.

(8) All licensed or designated EMS providers who are notified or become aware of a certified EMS individual arrest, charge or conviction shall notify the Department CCEU within 7 business days.

R426-5-2800. Review and Investigation by the Complaint, Compliance and Enforcement Unit (CCEU).

(1) The CCEU shall review all complaints filed against an EMS provider and a certified EMS individual.

(a) Complaints shall be in writing and submitted on an approved CCEU complaint form.

(b) Every complaint shall have the complainants contact information and be signed by the complainant.

(2) Designated or licensed provider complaints will be investigated by the CCEU.

(a) The CCEU may conduct interviews with the provider.

(b) The CCEU will allow the provider an opportunity to respond to the allegations and to provide supporting witnesses and documentation.

(c) Based on the investigation, the CCEU will make recommendations to the Department's Bureau Director.

(d) If the CCEU recommendation is that the provider is to be placed on probation or suspension, the CCEU shall recommend terms and conditions.

(e) The Department may take action against a designated or licensed provider's license or designation based on the investigative findings.

(f) The Department shall notify the provider in writing of the Department's decision within 30 days of completion of the investigation.

(3) Certified EMS individual complaints will be investigated either by the CCEU or by the Primary Affiliated Provider (PAP).

(a) The CCEU shall investigate the following complaints against a certified EMS individual.

(i) If the CCEU determines that:

(A) the certified EMS individual demonstrates a threat to him or herself or to a coworker,

(B) the certified EMS individual demonstrates a threat to the public health,

(C) the certified EMS individual demonstrates a threat to the safety or welfare of the public,

(D) the certified EMS individual potentially violated R426-5-2800(4), or

(E) the CCEU determines the risk cannot be reasonably mitigated.

(ii) The Department may place the certified EMS individual on a restricted certification while and investigation is pending until terms are reached for a provisional certification using the process outlined in R426-5-2800(5)(e).

(iii) The CCEU may conduct interviews with all parties necessary. The CCEU will gather information and evidence, which may include requiring the certified EMS individual to submit to a drug or alcohol screening or any other appropriate evaluation.

(iv) The certified EMS individual shall have an opportunity to respond to the allegations and to provide supporting witnesses and documentation.

(v) Once the CCEU has completed its investigation it shall submit the report with all findings and recommendations to the Peer Review Board per R426-5-2900 and the Bureau Director for review.

(vi) While waiting for the Peer Review Board process, the Department shall notify the certified EMS individual in writing of the CCEU's recommendation within 30 days of the completion of the investigation.

(b) The Primary Affiliated Provider shall investigate a complaint against the certified EMS individual who the CCEU refers to the PAP.

(i) The PAP investigation shall:

(A) be investigated by the licensed or designated EMS provider's EMS certified medical training officer or designee;

(B) be completed and findings submitted to the CCEU within 30 calendar days from receipt of complaint from the CCEU;

(ii) If the CCEU determines that the PAP actions are insufficient, the CCEU may initiate an investigation of the certified EMS individual which follows the CCEU and the Peer Review Board process.

(4) The Department shall investigate a certified EMS individual's certification or a provider's license or designation for any of the following:

(a) refusal to submit to a drug test requested by the EMS provider or the Department;

(b) failure to report by an individual or any affiliated provider pursuant to 426-5-2700(7)and(8);

(c) non-prescribed use of or addiction to narcotics or drugs;

(d) use of alcoholic beverages or being under the influence of alcoholic beverages at any level while on call or on duty as an EMS personnel or while driving any EMS vehicle;

(e) being under the influence of a prescribed or non-prescribed medication or drug(legal or illegal) while on call or on duty as a certified EMS individual who affects the person's ability to operate or function safely.

(f) failure to comply with the training, licensing, or relicensing requirements for the license or certification;

(g) failure to comply with a contractual agreement as an EMS instructor, a training officer, or a course coordinator. Action taken by the Department on this item shall only be against the individual's ability to perform this particular function and would not affect their base certification;

(h) fraud or deceit in applying for or obtaining a certification;

(i) fraud, deceit, lack of professional competency, patient abuse, or theft in the performance of the duties as a certified EMS individual;

(j) false or misleading information or failure to disclose criminal background information during an investigation or an EMS Personnel Peer Review Board proceeding;

(k) unauthorized use or removal of narcotics, medications, supplies or equipment from a provider, emergency vehicle or health care facility;

(l) performing procedures or skills beyond the level of certification or providers licensure;

(m) violation of laws pertaining to medical practice, drugs, or controlled substances;

(n) mental incompetence as determined by a court of competent jurisdiction;

(o) demonstrated inability and failure to perform adequate patient care;

(p) inability to provide emergency medical services with reasonable skill and safety because of illness, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated;

(q) misrepresentation of an individual's level of certification;

(r) failure of a certified EMS individual to display a clearly identifiable level of medical certification during an EMS response;

(s) unsafe, unnecessary or improper operation of an emergency vehicle that would likely cause concern or create a danger to the general public; or

(t) improper or unnecessary use of emergency equipment.

(5) Background screening referrals may be submitted to the CCEU.

(a) The CCEU shall review any case referred under R426-5-2700.

(b) The CCEU may require the certified EMS individual to provide the proper criminal background documentation.

(c) The certified EMS individual shall notify the CCEU of all entities they work for or are affiliated with or that they may become affiliated with in connection to their EMS certification.

(d) Failure to comply with any CCEU requirements may result in disciplinary action against the certified EMS individual's certification.

(e) The CCEU may negotiate with the certified EMS individual and their primary affiliated provider to determine terms and conditions of the EMS individual's provisional certification.

(i) When the Department determines a certified EMS individual's certification will be restricted, the CCEU shall notify both the certified EMS individual and all providers they are affiliated with.

(ii) Within 2 business days of receiving the complaint or referral, the CCEU will attempt to contact and begin negotiations with the primary affiliated provider and the certified EMS individual. All parties will attempt to determine reasonable terms and conditions to the certified EMS individual's certification that would mitigate the concerns alleged in the complaint or referral.

(iii) If terms and conditions are agreed upon between the parties, the certified EMS individual and all affiliated providers shall be notified immediately. This notification will include that the certified EMS individual is under a provisional certification with terms and conditions until the resolution of any criminal charge or the completion of an investigation.

(iv) If the certified EMS individual is not employed or affiliated with a provider or if terms and conditions are not agreed upon, the CCEU will take action necessary to protect the public's best interest.

(v) The CCEU, the certified EMS individual and the provider, if applicable shall sign the terms of the provisional certification and licensure agreement. Non-licensed providers shall be notified of the provisional certification and its terms and conditions.

(vi) Once the provisional certification has been signed, all known EMS providers who the certified EMS individual is affiliated with will be notified immediately by the CCEU.

(vii) If any affiliated EMS provider or the certified EMS individual fail to abide by the terms and conditions of a provisional certification, both may be subject to sanctions by the Department.

(6) Appeal process;

(a) If a provider chooses to appeal an action by the Department, they may appeal to the EMS Committee or pursue a remedy under the Utah Administrative Procedures Act, 63G-4-201.

(i) If the Department action is appealed to the EMS Committee, then the recommendation shall be given to the Department Executive Director for a final decision.

(b) If a certified EMS individual chooses to appeal an action by the Department, they may appeal to the Executive Director, or pursue a remedy under the Utah Administrative Procedures Act, 63G-4-201.

R426-5-2900. Peer Review Board.

The EMS Personnel Peer Review Board is created under section 26-8a-105(4).

(1) Membership of the EMS Personnel Peer Review Board. The EMS Personnel Peer Review Board shall be composed of the following 15 members appointed by the Executive Director of the Department of Health:

(a) One EMS administrative officer representing a licensed provider from a county of the first or second class;

(b) One EMS administrative officer representing a licensed provider from a county of the third through sixth class;

(c) One educational representative from an accredited EMS training program;

(d) One physician certified and practicing as an EMS Medical Director;

(e) One certified EMD;

(f) Two representatives from professional employee groups, one fire based, and one non-fire based;

(g) Two certified quality assurance/medical training officers;

(h) Two non-supervisory certified EMT's;

(i) Two non-supervisory certified AEMT's;

(j) Two non-supervisory certified Paramedics;

(2) EMS Personnel Peer Review Board member terms of office:

(a) Except as provided in subsection (2)(b) members shall be appointed for a six year term beginning no later than October 1, 2015.

(b) The Department shall adjust the length of terms to ensure the terms of members of the board are staggered so approximately one third of the board is appointed every two years.

(c) No member shall serve consecutive full terms.

(d) When a vacancy occurs in the membership of the board for any reason, the Executive Director of the Department shall

appoint the replacement for the balance of the unexpired term. If the balance of the term is greater than 50% of the initial term, then the term shall be considered a full term.

(e) The EMS Personnel Peer Review Board shall organize and select one of its members as Chair and one of its members as Vice Chair to serve no more than two years in each position.

(f) If a board member becomes ineligible for the EMS Personnel Peer Review Board membership position through promotion, an increase in level of certification or transfer out of the employment position which qualified them for the appointment, they shall be replaced at the next two year interval.

(g) An equitable mix of urban and rural members is preferred.

(3) EMS Personnel Peer Review Board Meetings.

(a) Regular meetings of the Peer Review Board shall be scheduled quarterly.

(i) Regular meetings shall be noticed and posted to employers and posted in accordance with the Utah Open and Public Meetings Act, Section 52-4-202.

(ii) Failure to attend three or more consecutive meetings by any member may be grounds for removal of that member and replacement in accordance with subsection (2)(d).

(iii) A member may not receive compensation or benefits from the Department for the member's service. The member may receive per diem and travel expensed in accordance with Department rules and policies.

(4) Once a complaint against a certified EMS individual is investigated, the CCEU shall refer the case and provide a report with all findings and recommendations to the EMS Personnel Peer Review Board.

(5) If the EMS Personnel Peer Review Board chooses to recommend any action that deviates from the CCEU recommendation, the board shall provide written justification for that recommendation.

(6) The EMS Personnel Peer Review Board may make recommendations to the Bureau Director, of:

(a) no Department action, or

(b) a letter of notice, or

(c) probation of the certified EMS individual's certification with specific terms and conditions for a period of time, or

(d) suspension of the certified EMS individual's certification for a defined period of time, or

(e) permanent revocation of the certified EMS individual's certification.

(7) If the Department's Bureau Director modifies the recommended action of the EMS Personnel Peer Review Board, the Director shall attach a written letter of dissent noting the reasoning for the decision. The Bureau Director shall then notify the EMS Personnel Peer Review Board of the dissent and action taken.

(8) The certified EMS individual shall be notified by the Department of any action taken within 15 days of the decision by mail.

(9) An action to restrict, place on probation, suspend, or revoke the certified EMS individual's certification shall be done in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

R426-5-3000. EMS Rules Task Force.

The EMS Rules Task Force is created under section 26-8a-105(3).

(1) Membership of the EMS Rules Task Force. The EMS Rules Task Force shall be composed of the following members appointed by the Executive Director of the Department of Health:

(a) a representative from the Utah Fire Chiefs' Association;

(b) a representative from the EMS Directors' Association;

(c) a EMS medical director;

(d) a privately owned EMS representative;

(e) a rural EMS medical dispatch representative;

(f) a paramedic licensed provider representative;

(g) an urban EMS medical dispatch representative;

(h) an Emergency Nurses Association representative;

(i) a course coordinator from an accredited EMS training program;

(j) an EMS training officer;

(k) a representative from the State EMS Committee;

(l) a trauma center representative.

(2) EMS Rules Task Force member terms of office:

(a) Except as provided in subsection (2)(b) members shall be appointed for a three year term.

(b) The Department shall adjust the length of terms to ensure the terms of members of the EMS Rules Task Force are staggered so approximately one third of the EMS Rules Task Force is appointed every two years.

(c) Members may serve two consecutive full terms.

(d) When a vacancy occurs in the membership for any reason, the Department shall solicit applications for replacement for the balance of the unexpired term. If the balance of the term is greater than 50% of the initial term, then the term shall be considered a full term.

(e) The EMS Rules Task Force may organize and select one of its members as Chair and one of its members as Vice Chair to serve no more than two years in each position.

(f) If a EMS Rules Task Force member becomes ineligible for the EMS Task Force membership position through promotion, an increase in level of certification or transfer out of the employment position which qualified them for the appointment, they shall be replaced at the next two year interval.

(g) An equitable mix of urban and rural members is preferred.

(3) EMS Rules Task Force Meetings.

(a) Regular meetings of the EMS Rules Task Force shall be scheduled as determined by the membership and the Department.

KEY: emergency medical services
May 31, 2016 **26-8a-302**
Notice of Continuation December 6, 2016

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 definitions, requirements, and general guidelines relating to the collection, control, use and release of data pursuant to Title 26, Chapter 33a.

R428-2-3. Definitions.

(1) The terms used in this rule are defined in Section 26-33a-102.

(2) In addition, the following definitions apply to all of Title R428:

(a) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(b) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.

(c) "Ambulatory surgical facility" is defined in Section 26-21-2.

(d) "Carrier" means any of the following Third Party Payors as defined in 26-33a-102(16):

(i) an insurer engaged in the business of health care or dental insurance in the state of Utah, as defined in Section 31A-1-301;

(ii) a business under an administrative services organization or administrative services contract arrangement;

(iii) a third party administrator, as defined in Section 31A-1-301, licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in Section 31A-1-301;

(iv) a governmental plan, as defined in Section 414 (d), Internal Revenue Code, that provides health care benefits;

(v) a program funded or administered by Utah for the provision of health care services, including Medicaid, the Utah Children's Health Insurance Program created under Section 26-40-103, and the medical assistance programs described in Title 26, Chapter 18 or any entity under a contract with the Utah Department of Health to serve clients under such a program;

(vi) a non-electing church plan, as described in Section 410 (d), Internal Revenue Code, that provides health care benefits;

(vii) a licensed professional employer organization as defined in Section 31a-40-102 acting as an administrator of a health care insurance plan;

(viii) a health benefit plan funded by a self-insurance arrangement;

(ix) the Public Employees' Benefit and Insurance Program created in Section 49-20-103;

(x) a pharmacy benefit manager, defined to be a person that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of any other carrier defined in subsection R428-2-3.

(e) "Claim" means a request or demand on a carrier for payment of a benefit.

(f) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(g) "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, health care provider, data supplier, service provided, charge for service, payer source, medical diagnosis, and medical treatment.

(h) "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.

(i) "Electronic media" means a compact disc, digital video disc, external hard drive, or other media where data is stored in digital form.

(j) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.

(k) "Eligible Enrollee" means an enrollee who meets the criteria outlined in the NCQA survey specifications.

(l) "Emergency Room Data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single visit and treatment of a patient in an emergency room into an emergency room data record.

(m) "Enrollee" means any individual who has entered into a contract with a carrier for health care or on whose behalf such an arrangement has been made.

(n) "Health Insurance" has the same meaning as found in Section 31A-1-301.

(o) "Healthcare claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(p) "Healthcare Facility" means a hospital or ambulatory surgical facility.

(q) "Healthcare Facility Data" means ambulatory surgery data, discharge data, or emergency room data.

(r) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(s) "HEDIS data" means the complete set of HEDIS measures calculated by the carriers according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with the carriers.

(t) "Hospital" means a general acute hospital or specialty hospital as defined in Section 21-21-2 that is licensed under Rule R432.

(u) "Level 1 data element" means a required reportable data element.

(v) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.

(w) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(x) "Office" means the Office of Health Care Statistics within the Utah Department of Health.

(y) "Order" means an action of the committee that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(z) "Patient Social Security number" is the social security number of a person receiving health care.

(aa) "Performance Measure" means the quantitative, numerical measure of an aspect of the carrier, or its membership in part or in its entirety, or qualitative, descriptive information on the carrier in its entirety as described in HEDIS.

(bb) "Public Use Data Set" means a data extract or a subset of a database that is deemed by the Office to not include identifiable data or where the probability of identifying

individuals is minimal.

(cc) "Report" means a disclosure of data or information collected or produced by the committee or Office, including but not limited to a compilation, study, or analysis designed to meet the needs of specific audiences.

(dd) "Research and Statistical Purposes" means having the objective of creating knowledge or answering questions, including a systematic investigation that includes development, testing, and evaluation; the description, estimation, projection, or analysis of the characteristics of individuals, groups, or organizations; an analysis of the relationships between or among these characteristics; the identification or creation of sampling frames and the selection of samples; the preparation and publication of reports describing these matters; and the development, implementation, and maintenance of methods, procedures, or resources to support the efficient use or management of the data.

(ee) "Research Data Set" means a data extract or subset of a database intended for use by investigators or researchers for bona fide research purposes that may include identifiable information or where there is more than a minimal probability that the data could be used to identify individuals.

(ff) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number.

(gg) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.

(hh) "Sampling Frame" means the carrier enrollment file as described criteria outlined by the NCQA survey specifications.

(ii) "Submission year" means the year immediately following the covered period.

(jj) "Survey agency" means an independent contractor on contract with the Office of Health Care Statistics.

(kk) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(ll) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

(mm) "Utah Healthcare Facility Data Submission Guide" means the document referenced in Subsection R428-1-4(1).

(nn) "NCQA Survey Specifications" means the document referenced in Subsection R428-1-4(2)

(oo) "NCQA HEDIS Specifications" means the document referenced in Subsection R428-1-4(3)

(pp) "Data Submission Guide for Claims Data" means the document referenced in Subsection R428-1-4(4) for data submissions required from April 1, 2016 to February 28, 2017 and the document referenced in Subsection R428-1-4(5) for data submissions beginning March 1, 2017.

R428-2-4. Technical Assistance.

The Office may provide technical assistance or consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit required data according to Title R428.

R428-2-5. Data Classification and Access.

(1) Data collected by the committee are not public, and as such are exempt from the classification and release requirements specified in Title 63g, Chapter 2, Government Records Access and Management Act.

(2) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall not:

(a) take any action that might provide information to any unauthorized individual or agency;

(b) scan, copy, remove, or review any information to which specific authorization has not been granted;

(c) discuss information with unauthorized persons which could lead to identification of individuals;

(d) give access to any information by sharing passwords or file access codes.

(3) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall:

(a) maintain the data in a safe manner which restricts unauthorized access;

(b) limit use of the data to the purposes for which access is authorized;

(c) report immediately any unauthorized access to the Office or its designated security officer.

(4) A failure to report known violations by others is subject to the same punishment as a personal violation.

(5) The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in this section.

R428-2-6. Editing and Validation.

(1) Each data supplier shall review each required record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

(2) The Office may subject submitted data to edit checks. The Office may require the data supplier to correct data failing an edit check as follows:

(a) The Office may, by first class U.S. mail or email, inform the submitting data supplier of any data failing an edit check.

(b) The submitting data supplier shall make necessary corrections and resubmit all corrected data to the Office within 10 business days of the date the Office notified the supplier.

(3) The Office or its designee may reject any data submission that fails to conform to the submission requirements. A data supplier whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office or its designee within 10 state business days of notice that the data does not meet the submission requirements.

R428-2-7. Error Rates.

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

R428-2-8. Data Disclosure.

(1) The committee may disclose data received from data suppliers or data or information derived from this data as specified in Title 26, Chapter 33a.

(2) The Office may prepare reports 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. The Office may create reports in a variety of formats including print or electronic documents, searchable databases, web-sites, or other user-oriented methods for displaying information.

(3) Unless otherwise specified by the committee, the time period for data suppliers and health care providers to prepare a response as required in Subsections 26-33a-107(1) and 26-33a-107(3) shall be 15 business days. If a data supplier fails to respond in the specified time frame, the committee may conclude that the information is correct and suitable for release.

(4) The committee may note in a report 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.

(5) The Office may release to the data supplier or its designee any data elements provided by the supplier without notification when a data supplier requests the data be so supplied.

(6) The committee may disclose data in computer readable formats.

(7) The Director of the Office may approve the disclosure of a public use data set upon receipt of a written request that includes the following:

(a) the name, address, e-mail and telephone number of the requester;

(b) a statement of the purpose for which the data will be used;

(c) agreement to other terms and conditions as deemed necessary by the Office.

(8) As allowed by Section 26-33a-109, thecommittee may release identified data for research and statistical purposes. A person requesting a research data set must provide:

(a) the name, address, e-mail and telephone number of the requester and for each person who will have access to the research data set;

(b) a statement of the purpose for which the research data set will be used;

(c) the starting and ending dates for which the research data set is requested;

(d) an explanation of why a public use data set could not be used for to accomplish the stated research purposes, including a separate justification for each element containing identified data requested;

(e) evidence of the integrity and ability to safeguard the data from any breach of confidentiality;

(f) evidence of competency to effectively use the data in the manner proposed;

(g) a satisfactory review from an Office-approved institutional review board;

(h) a guarantee that no further disclosure will occur without prior approval of the Office;

(i) a signed agreement to comply with other terms and conditions as stipulated by the committee.

R428-2-9. Penalties.

(1) The Office may apply civil penalties or subject violators to legal prosecution.

(2) Sections 26-23-6 and 26-33a-110 specify civil and criminal penalties for failure to comply with the requirements of Title R428 or Title 26, Chapter 33a.

(3) Notwithstanding Subsection R428-2-9(2), any person that violates any provision of Title R428 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.

(4) Notwithstanding Subsection R428-2-9(2) and R428-2-9(3), a data supplier that violates any provision of Title R428 may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

(a) Not to exceed the sum of $10,000 per violation

(b) Each day of violation is a separate violation

(c) Deadlines established in separate sections of Title R428 are considered as separate provisions.

(5) The Office may impose a fine on any data supplier that misses a deadline to submit data required in Title R428 as follows:

(a) A fine of $250 per violation shall be imposed until the data has been supplied as required

(b) The fines shall increase to $500 per violation for each violation when any data supplier that is currently in violation misses another deadline

(c) After forty-five consecutive calendar days of violation, the Office may adjust the per day penalty subject to the limits in (4)(a) taking into account the following aggravating and mitigating circumstances:

(i) Prior violation history and history of compliance

(ii) Good faith efforts to prevent violations

(iii) The size and financial capability of the data supplier.

R428-2-10. Exemptions and Extensions.

(1) The committee may grant exemptions or extensions from reporting requirements in Title R428 to data suppliers under certain circumstances.

(2) The committee may grant an exemption to a data supplier when the supplier demonstrates that compliance imposes an unreasonable cost.

(a) A data supplier may request an exemption from any particular requirement or set of requirements of Title R428. The data supplier must submit a request for exemption no less than 30 calendar days before the date the supplier would have to comply with the requirement.

(b) The committee may grant an exemption for a maximum of one calendar year. A data supplier wishing an additional exemption must submit an additional, separate request.

(3) The committee may grant an extension to a data supplier when the supplier demonstrates that technical or unforeseen difficulties prevent compliance.

(a) A data supplier may request an extension for any deadline required in Title R428. For each deadline for which the data supplier requests an extension, the data supplier must submit its request no less than seven calendar days before the deadline in question.

(b) The committee may grant an extension for a maximum of 30 calendar days. A data supplier wishing an additional extension must submit an additional, separate request.

(4) The supplier requesting an extension or exemption shall include:

(a) The data supplier's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

(5) A carrier that covers fewer than 2,500 individual Utah residents as of January 1 of a given year is exempt from all requirements of this title except that once a carrier has covered a cumulative total of 2,500 such individuals during a calendar year, they are no longer considered exempt for the remainder of that year.

R428-2-11. Contractor Liability.

(1) A data supplier may contract with another entity to submit required data elements on their behalf under Title R428. In such cases, the data supplier must notify the Office of the identity and contact information of the contractor.

(2) Regardless of the existence of a contractor, the responsibility for complying with all requirements of Title R428 remains solely with the data supplier.

R428-2-12. Data Supplier Contacts.

(1) Data suppliers required to submit healthcare claims data or healthcare facility data shall provide current contact information to the Office by September 1 of each year using a web-site provided by the Office for this purpose.

(2) Each data supplier newly required to submit healthcare

claims data or healthcare facility data under this rule, including by a change to the rule or because it no longer qualifies for an exemption, shall provide contact information to the Office within 30 days of learning that they will be required to submit data under this rule.

(3) Each data supplier shall designate a person who is responsible for submitting data and a person who is responsible for communicating with the Office regarding the submission of the data. Each data supplier shall notify the Office of changes in this designation within thirty calendar days.

KEY: health, health policy, health planning
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Notice of Continuation November 10, 2016

R432. Health, Family Health and Preparedness, Licensing.
R432-3. General Health Care Facility Rules Inspection and Enforcement.
R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and the licensing agency in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by The Joint Commission (TJC), Accreditation Association for Ambulatory Health Care (AAAHC), Accreditation Commission for Health Care, Community Health Accreditation Program or the American Osteopathic Association's Health Facilities Accreditation Program (AOA/HFAP) in lieu of the licensing inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

(a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) accreditation certificate;

(b) Joint Commission Statement of Construction;

(c) survey reports and recommendations;

(d) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) inspections,

(b) complaint investigations,

(c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:

(i) facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved,

(ii) any facility or agency that does not have a current, valid accreditation certificate, or

(iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular inspections shall apply.

R432-3-4. Access for Inspections.

(1) The Department or its designee may, upon presentation of proper identification, inspect each licensed health care facility or agency as necessary to determine compliance with applicable laws, rules and federal regulations.

(2) Each licensed health care facility or agency must:

(a) allow authorized representatives of the Department immediate access to the facility or agency, including access to all staff and patients; and

(b) make available and permit photocopying of facility records and documents by, or on behalf of, the Department as necessary to ascertain compliance with applicable laws, rules and federal regulations. Copies become the responsibility and property of the Department.

R432-3-5. Statement of Findings.

(1) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of Findings to the licensee or his designee within the following timeframe.

(a) Statements for Class I and III violations are served immediately.

(b) Statements for Class II violations are served within ten working days.

(2) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an expired license.

(3) The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.

(4) The Statement of Findings shall include:

(a) the statute or rule violated;

(b) a description of the violation;

(c) the facts which constitute the violation; and

(d) the classification of the violation.

R432-3-6. Plan of Correction.

(1) A health facility or agency shall submit within 14 calendar days of receipt of a Statement of Findings a Plan of Correction outlining the following:

(a) how the required corrections shall be accomplished;

(b) who is the responsible person to monitor the correction is accomplished; and

(c) the date the facility or agency will correct the violation.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the Plan of Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. If the Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the facility or agency corrects the violation prior to

submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a Plan of Correction as specified, the Department shall notify the facility or agency.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) If a licensed or unlicensed health facility or agency is served with a Statement of Findings citing a Class I violation, the facility or agency shall correct the situation, condition, or practice constituting the Class I violation immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(a) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed -upon correction period to determine correction of Class I violations.

(b) If a health facility or agency fails to correct a Class I violation as outlined in the accepted Plan of Correction, the Department shall pursue sanctions or penalties through a formal adjudicative proceeding as outlined in Rule R432-30.

(8) A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time-frame approved by the Department which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

(9) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

(10) The Department shall determine which sanction to impose by considering the following:

(a) the gravity of the violation;

(b) the effort exhibited by the licensee to correct violations;

(c) previous facility or agency violations; and

(d) other relevant facts.

(11) The Department shall serve a facility or agency with a Statement of Findings for a Class III violation. A facility of agency cited for a Class III violation must file a Request for Agency Action/License Application form and pay the required licensing fee within 14 days of the receipt of the Class III Statement of Findings.

(a) The Statement of Findings may include the names of individuals residing in the facility who require services outside the scope of the proposed licensing category.

(b) The facility shall arrange for all individuals to be relocated if the facility is unable to meet the individuals' needs within the scope of the proposed license category.

(c) If the facility or facility fails to submit the Request for Agency Action/License Application as specified, the Department shall issue a written Notice of Agency Action ordering closure of the facility or agency.

(d) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility or agency under an emergency adjudicative proceeding, as outlined in Rule R432-30.

R432-3-7. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

(a) denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state;

(b) restriction or prohibition on admissions to a health facility or agency for:

(i) any Class I deficiency,

(ii) Class II deficiencies that indicate a pattern of care and have resulted in the substandard quality of care of patients,

(iii) repeat Class I or II deficiencies that demonstrate continuous noncompliance or chronic noncompliance with the rules, or

(iv) permitting, aiding, or abetting the commission of any illegal act in the facility or agency;

(c) distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensing rules or illegal conduct permitted by the facility or agency and the Department action taken;

(d) placement of Department employees or Department-approved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is closed;

(e) assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility or agency;

(f) during the correction period, placement of a temporary manager to ensure the health and safety of the patients; or

(g) issuance of a civil money penalty pursuant to UCA 26-23-6, not to exceed the sum of $10,000 per violation.

(2) If the Department imposes a restriction or prohibition on admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee.

(a) The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency.

(b) The Department shall impose the restriction or prohibition if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on admissions within the previous 24 month period; or

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) circumstances in the facility or agency indicate actual harm, a pattern of harm, or a serious and immediate threat to patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or agency to post a written notice on all public entry doors.

R432-3-8. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in section 63-46b-20 shall be followed.

(3) If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall:

(a) state the reasons the facility is ordered closed;

(b) cite the statute or rule violated; and

(c) advise as to the commencement of a formal adjudicative proceeding in accordance with this rule.

(4) The Department may maintain an action in the name of the state for injunction or other process against the health

facility or agency which disobeys a closure order as provided in section 26-21-15.

(5) The Department may assist in relocating patients or residents to another licensed facility or agency.

(6) The Department may pursue other lesser sanctions in lieu of the closure order.

(7) The Department may, in addition to emergency closure, seek criminal penalties.

R432-3-9. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility or agency licensing category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the Statement of Findings two prior violations and given the licensee or facility administrator a written warning notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

R432-3-10. Alternative Remedies for Nursing Facilities.

(1) The department conducts on-site inspections of nursing facilities to determine compliance with state and federal nursing home requirements. When the department finds that a nursing facility is out of compliance with requirements of participation, the department may apply remedies, including Federal civil money penalties (CMP) to compel the facility to implement corrective measures to achieve compliance.

(2) For Medicare and/or Medicaid certified nursing facilities the authority to apply the remedies described in this section is defined in the federal Omnibus Budget Reconciliation Act (OBRA) of 1987 (P.L. 100-203), which mandates compliance with requirements for participation in the program, and in Section 26-18-3 of the Utah Code Annotated 1953. Section 1819(h) and 1919(h) of the Social Security Act specifies remedies available to a state when a skilled nursing facility (SNF) or nursing facility (NF) is out of compliance with the participation requirements. This section requires the state to ensure prompt compliance, and it further specifies that the available remedies are in addition to other remedies available under state or federal law and, except for Federal CMP, are imposed prior to the conduct of a hearing.

(3) This rule establishes criteria for the imposition of remedies authorized by statute.

(4) The department adopts and incorporates by reference the regulations in 42 CFR, Part 488-Survey, Certification, and Enforcement Procedures, as amended in the Federal Register for November 10, 1994, 59 FR 56237. Remedies available for non-compliance with one or more participation requirements may include:

(a) temporary management;

(b) denial of payment for new admissions;

(c) transfer of residents;

(d) closure of the facility and transfer of residents;

(e) state monitoring; and

(f) Civil Money Penalties. Civil Money Penalties may be imposed for either:

(i) the number of days a facility is out of compliance with one or more participation requirements; or

(ii) for each instance that a facility is not in substantial compliance.

(5) Interest shall be assessed on the unpaid balance of the Federal CMP, beginning on the due date. The interest rate charged shall be the average of the bond equivalent of the weekly 90-day U.S. Treasury bill auction rates during the period for which interest will be charged.

(6) Disposition of Federal CMP Collected.

(a) The department shall deposit Federal CMP and corresponding interest collected from Medicaid certified facilities in the General Fund in accordance with Section 26-18-3(5).

(b) Federal CMP collected by the department must be applied in accordance with Section 1819 and 1919 of the act for the protection of the health and property of residents.

R432-3-11. Annual Reporting Requirements.

(1) A nursing care facility approved for a health facility license under Section 26-21-23(2)(c) shall submit an annual financial report within 90 days of the end of each calendar year.

(2) the financial report shall contain:

(a) total of all revenues received within the calendar year;

(b) total of all Medicare inpatient revenue received within the calendar year;

(c) total of all Medicare Advantage revenue received within the calendar year; and

(d) Percentage of Medicare inpatient revenue including Medicare Advantage revenue in relation to the total of all revenues received within the calendar year.

(3) The department shall review the submitted reports for compliance with 26-21-23(7)(a). The Department may perform financial audits as part of the review. If the department determines a facility is not in compliance with 26-21-23(7)(a)a CMP of $50,000 will be issued for the facility's failure to comply.

KEY: health care facilities

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Notice of Continuation August 12, 2013	**26-21-14 through 26-21-16**

R432. Health, Family Health and Preparedness, Licensing.
R432-270. Assisted Living Facilities.
R432-270-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

This rule establishes the licensing and operational standards for assisted living facilities Type I and Type II. Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet the care needs in a safe manner.

R432-270-3. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) In addition:

(a) "Assessment" means documentation of each resident's ability or current condition in the following areas:

(i) memory and daily decision making ability;

(ii) ability to communicate effectively with others;

(iii) physical functioning and ability to perform activities of daily living;

(iv) continence;

(v) mood and behavior patterns;

(vi) weight loss;

(vii) medication use and the ability to self-medicate;

(viii) special treatments and procedures;

(ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;

(x) leisure patterns and interests;

(xi) assistive devices; and

(xii) prosthetics.

(b) "Activities of daily living (ADL)":

(i) means those personal functional activities required for an individual for continued well-being, including:

(A) personal grooming, including oral hygiene and denture care;

(B) dressing;

(C) bathing;

(D) toileting and toilet hygiene;

(E) eating/nutrition;

(F) administration of medication; and

(G) transferring, ambulation and mobility.

(ii) are divided into the following levels:

(A) "Independent" means the resident can perform the ADL without help.

(B) "Assistance" means the resident can perform some part of an ADL, but cannot do it entirely alone.

(C) "Dependent" means the resident cannot perform any part of an ADL; it must be done entirely by someone else.

(c) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.

(d) "Hospice patient" means an individual who is admitted to a hospice program or agency.

(e) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.

(f) "Monitoring device":

(i) means a video surveillance camera or a microphone or other device that captures audio; and

(ii) does not include:

(A) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or

(B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.

(g) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(h) "Self-direct medication administration" means the resident can:

(i) recognize medications offered by color or shape; and

(ii) question differences in the usual routine of medications.

(i) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.

(j) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.

(k) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.

(l) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).

(m) "Social care" means:

(n) providing opportunities for social interaction in the facility or in the community; or

(ii) providing services to promote independence or a sense of self-direction.

(o) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensing.

(1) A person that offers or provides care to two or more unrelated individuals in a residential facility must be minimally licensed as an assisted living facility if:

(a) the individuals stay in the facility for more than 24 hours; and

(b) the facility provides or arranges for the provision of assistance with one or more activity of daily living for any of the individuals.

(2) An assisted living facility may be licensed as a Type I facility if:

(a) the individuals under care are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(3) An assisted living facility must be licensed as a Type II facility if the individuals under care are capable of achieving mobility sufficient to exit the facility only with the limited assistance of one person;.

(4) A Type I assisted living facility shall provide social care to the individuals under care.

(5) A Type II assisted living facility shall provide care in a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who need any of these services as required by department rule.

(6) Type I and II assisted living facilities must provide each resident with a separate living unit. Two residents may share a unit upon written request of both residents.

(7) An individual may continue to remain in an assisted living facility provided:

(a) the facility construction can meet the individual's needs;

(b) the individual's physical and mental needs are appropriate to the assisted living criteria; and

(c) the facility provides adequate staffing to meet the individual's needs.

(8) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(a) A large assisted living facility houses 17 or more

residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) successfully complete the criminal background screening process defined in R432-35; and

(e) for all Type II facilities, complete a Department approved national certification program within six months of hire.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-305, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person within 24 hours of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(3) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age or be a certified nurse aide and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in

accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures; and

(e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

(a) principles of good nutrition, menu planning, food preparation, and storage;

(b) principles of good housekeeping and sanitation;

(c) principles of providing personal and social care;

(d) proper procedures in assisting residents with medications;

(e) recognizing early signs of illness and determining when there is a need for professional help;

(f) accident prevention, including safe bath and shower water temperatures;

(g) communication skills which enhance resident dignity;

(h) first aid;

(i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and

(j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(13) The facility shall develop and implement policies and procedures governing an infection control program to protect residents, family and personnel; which includes appropriate task related employee infection control procedures and practices.

(14) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-9. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. Assisted living Type II residents who have been assessed to require a secure environment may be housed in a secure unit, provided the secure unit is approved by the fire authority having jurisdiction. This right does not prohibit the locking of facility entrance doors if egress is maintained;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility, as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2a; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) A Type I facility:

(a) shall accept and retain residents who meet the following criteria:

(i) are ambulatory or mobile and are capable of taking life saving action in an emergency without the assistance of another person;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the activities of daily living (ADL); and

(iv) do not require total assistance from staff or others with more than three ADLs.

(b) may accept and retain residents who meet the following criteria:

(i) are cognitively impaired or physically disabled but able to evacuate from the facility without the assistance of another person; and

(ii) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

(5) A Type II facility may accept and retain residents who meet the following criteria:

(a) require total assistance from staff or others in more than three ADLs, provided that:

(i) the staffing level and coordinated supportive health and social services meet the needs of the resident; and

(ii) the resident is capable of evacuating the facility with the limited assistance of one person.

(b) are physically disabled but able to direct their own care; or

(c) are cognitively impaired or physically disabled but able to evacuate from the facility with the limited assistance of one person.

(6) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others;

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital, long-term nursing care or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins.

(7) Type I and Type II assisted living facilities shall not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.

(8) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing

requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

(9) A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) a facility may retain hospice patient residents who are not capable of exiting the facility without assistance with the following conditions:

(i) the facility must assure that a worker or an individual is assigned solely to each specific hospice patient and is on-site to assist the resident in emergency evacuation 24 hours a day, seven days a week;

(ii) the facility must train the assigned worker or individual to specifically assist in the emergency evacuation of the assigned hospice patient resident;

(iii) the worker or individual must be physically capable of providing emergency evacuation assistance to the particular hospice patient resident; and

(iv) hospice residents who are not capable of exiting the facility without assistance comprise no more than 25 percent of the facility's resident census.

(10) A type II assisted living facility may accept and retain hospice patient residents under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) if the hospice patient resident cannot evacuate the facility without significant assistance, the facility must:

(i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and

(ii) integrate the emergency plan into the resident's service plan.

R432-270-11. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs because the resident poses a threat to health or safety to self or others, or the facility is not able to provide required medical treatment.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

(6) The facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.

R432-270-12. Resident Assessment.

(1) A signed and dated resident assessment shall be completed on each resident prior to admission and at least every six months thereafter.

(2) In Type I and Type II facilities, the initial and six-month resident assessment must be completed and signed by a licensed health care professional.

(3) The resident assessment must accurately reflect the resident's status at the time of assessment.

(4) The resident assessment must include a statement signed by the licensed health care professional completing the resident assessment that the resident meets the admission and level of assistance criteria for the facility.

(5) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(6) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition and update the resident's service plan to reflect the change in condition.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan must be prepared by the administrator or a designated facility service coordinator.

(4) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-14. Service Coordinator.

(1) If the administrator appoints a service coordinator, the service coordinator must have knowledge, skills and abilities to coordinate the service plan for each resident.

(2) The duties and responsibilities of the service coordinator must be defined by facility policy and included in the designee's job description.

(3) The service coordinator is responsible to document that the resident or resident's designated responsible person is encouraged to actively participate in developing the service plan.

(4) The administrator and designated service coordinator are responsible to ensure that each resident's service plan is implemented by facility staff.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(2) A Type I assisted living facility must employ or contract with a registered nurse to provide or delegate medication administration for any resident who is unable to self-medicate or self-direct medication management.

(3) A Type II assisted living facility must employ or contract with a registered nurse to provide or supervise nursing services to include:

(a) a nursing assessment on each resident;

(b) general health monitoring on each resident; and

(c) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31B-701.

(4) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(3)(a) through (c).

(5) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services. To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

(6) At least one certified nurse aide must be on duty in a Type II facility 24 hours per day.

R432-270-16. Secure Units.

(1) A Type II assisted living facility with approved secure units may admit residents with a diagnosis of Alzheimer's/dementia if the resident is able to exit the facility with limited assistance from one person.

(2) Each resident admitted to a secure unit must have an admission agreement that indicates placement in the secure unit.

(a) The secure unit admission agreement must document that a wander risk management agreement has been negotiated with the resident or resident's responsible person.

(b) The secure unit admission agreement must identify discharge criteria that would initiate a transfer of the resident to a higher level of care than the assisted living facility is able to provide.

(3) There shall be at least one staff with documented training in Alzheimer's/dementia care in the secure unit at all times.

(4) Each secure unit must have an emergency evacuation plan that addresses the ability of the secure unit staff to evacuate the residents in case of emergency.

R432-270-17. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

(a) notifying the resident's responsible person;

(b) arranging for transportation to and from the practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-18. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

(a) socialization activities;

(b) independent living activities to foster and maintain independent functioning;

(c) physical activities; and

(d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

(a) coordinate all recreational activities, including volunteer and auxiliary activities;

(b) plan, organize, and conduct the residents' activity program with resident participation; and

(c) develop and post monthly activity calendars, including information on community activities, based on residents' needs and interests.

(4) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(5) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is

required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (f) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the prescribing order.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(e) Residents may independently administer their own personal insulin injections if they have been assessed to be independent in that process. This may be done in conjunction with the administration of medication in methods (a) through (d) of this section.

(f) home health or hospice agency staff may provide medication administration to facility residents exclusively, or in conjunction with (a) through (e) of this section.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication; and

(g) the review date.

(5) The licensed health care professional or licensed pharmacist should document any change in the dosage or schedule of medication in the medication record. When changes in the medication are documented by the facility staff the licensed health care professional must co-sign within 72 hours. The licensed health care professional must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) Each resident's medication record must contain a list of possible reactions and precautions for prescribed medications.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications stored in a central storage area shall be:

(a) locked to prevent unauthorized access; and

(b) the resident shall have timely access to the medication.

(11) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(12) The facility must develop and implement policies governing the:

(a) security and disposal of controlled substances by the licensee or facility staff which shall be consistent with the provisions of 21 CFR 1307.21.

(b) destruction and disposal of unused, outdated, or recalled medications.

(13) The facility shall document the return of resident's medication to the resident or to the resident's responsible person upon discharge.

R432-270-20. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of $150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed $150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-21. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) employee application;

(b) date of employment;

(c) termination date;

(d) reason for leaving;

(e) documentation of CPR and first aid training;

(f) health inventory;

(g) food handlers permits;

(h) TB skin test documentation; and

(i) documentation of criminal background screening.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) the admission agreement;

(f) the resident assessment; and

(g) the resident service plan.

(5) Resident records must be retained for at least three years following discharge.

(6) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of residents. The reports shall be kept on file for at least three years.

R432-270-22. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.

(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.

(a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

(10) If food service personnel also work in housekeeping or provide direct resident care, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary food service.

R432-270-23. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:

(a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.

(b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

(3) The facility shall control odors by maintaining cleanliness.

(4) There shall be a trash container in every occupied room.

(5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-24. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including a sufficient supply of linens.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use at least one washing machine and one clothes dryer.

R432-270-25. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, in good repair and in compliance with R432-6.

(a) Fire rated construction and assemblies must be maintained in accordance with R710-3, Assisted Living Facilities.

(b) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(c) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning.

(d) Air filters installed in heating, ventilation and air conditioning systems must be inspected, cleaned or replaced in accordance with manufacturer specifications.

(2) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) The facility shall document maintenance work performed.

(4) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees Fahrenheit.

R432-270-26. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-27. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-28. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-29. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care. Policies and procedures must be available to staff regarding the respite care clients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

(a) a service agreement;

(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1), (2), and (5).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the advanced directive.

R432-270-29b. Adult Day Care Services.

(1) Assisted Living Facilities Type I and II may offer adult day care services and are not required to obtain a license from Utah Department of Human Services. If facilities provide adult day care services, they shall submit policies and procedures for Department approval.

(2) "Adult Day Care" means the care and support to three or more functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a licensed health care setting.

(3) A qualified Director shall be designated by the governing board to be responsible for the day to day program operation.

(4) The Director shall have written records on-site for each consumer and staff person, to include the following:

(a.) Demographic information;

(b.) An emergency contact with name, address and telephone number;

(c.) Consumer health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d.) Signed consumer agreement and service plan.

(e) Employment file for each staff person which includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion, and

(iv) in-service requirements.

(5) The program shall have written eligibility, admission and discharge policy to include the following:

(a) Intake process;

(b) Notification of responsible party;

(c) Reasons for admission refusal which includes a written, signed statement;

(d) Resident rights notification; and

(e) Reason for discharge or dismissal.

(6) Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, immunizations, legal status, and social psychological factors.

(7) A written consumer agreement, developed with the consumer, the responsible party and the Director or designee, shall be completed, signed by all parties include the following:

(a) Rules of the program;
(b) Services to be provided and cost of service, including refund policy; and
(c) Arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.
(8) The Director, or designee, shall develop, implement and review the individual consumer service plan. The plan shall include the specification of daily activities and services. The service plan shall be developed within three working days of admission and evaluated semi-annually.
(9) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. Each report will be reviewed by the Director and responsible party. The reports will be kept on file.
(10) There shall be a daily activity schedule posted and implemented as designed. (11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.
(12) There shall be a minimum of 50 square feet of indoor floor space per consumer designated for adult day care during program operational hours.
(a) Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.
(b) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.
(c) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.
(13) Staff supervision shall be provided continually when consumers are present.
(a) When eight or fewer consumers are present, one staff person shall provide direct supervision.
(b) When 9-16 consumers are present, two staff shall provide direct supervision at all time. The ratio of one staff per eight consumers will continue progressively.
(c) In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

R432-270-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

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R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: An adjustment to a salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) Career Mobility: A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(21) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, including:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) Detailed Position Record Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) DHRM: The Department of Human Resource Management.

(35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a

centralized and automated computer system administered by the Department of Human Resource Management.

(36) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(37) Disciplinary Action: Action taken by management under Rule R477-11.

(38) Dismissal: A separation from state employment for cause under Section R477-11-2.

(39) Dual State Employment: Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(40) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(41) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(42) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(43) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(44) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(45) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(46) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(47) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(48) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(49) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) GOMB: Governor's Office of Management and Budget.

(51) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(52) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(53) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(54) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);

(ii) directly related to law enforcement;

(iii) involving direct access or having control over direct access to controlled substances;

(iv) directly impacting the safety or welfare of the general public;

(v) requiring an employee to carry or have access to firearms; or

(b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) driver license

(55) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(56) HRE: Human Resource Enterprise; the state human resource management information system.

(57) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(58) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(59) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(60) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(61) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(62) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(63) Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

(64) Job Requirements: Skill requirements defined at the job level.

(65) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(66) Leave Benefit: A benefit provided to an employee that includes: Annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited employess.

(67) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(68) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(69) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(70) Market Comparability Adjustment: An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

(71) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(72) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(73) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(74) Nonfeasance: Failure to perform either an official duty or legal requirement.

(75) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(76) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.

(77) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(78) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(79) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(80) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(81) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(82) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq. for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(83) Phased Retirement: Employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date. During phased retirement retiree will receive a reduced retirement allowance.

(84) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(85) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(86) Position Identification Number: A unique number assigned to a position for FTE management.

(87) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(88) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(89) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(90) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(91) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(92) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(93) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(94) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(95) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(96) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(97) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(98) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(99) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(100) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(101) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(102) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(103) Salary Range: Established minimum and maximum rates assigned to a job.

(104) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(105) Separation: An employee's voluntary or involuntary departure from state employment.

(106) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(107) Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The salary range adjustment cannot have a budgetary impact on an agency unless additional approval is received from the Governor's Office.

(108) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(109) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(110) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(111) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(112) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(113) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(114) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(115) Wage: The fixed hourly rate paid to an employee.

(116) Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

KEY: personnel management, rules and procedures, definitions

January 1, 2017 67-19-6

Notice of Continuation February 2, 2012 67-19-18

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; and

(ii) shall work less than 30 hours per week.

(b) be Schedule TL, in which the employee:

(i) is hired to work on a time limited basis.

(c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.

(d) if the required work hours of the position meet or exceed 30 hours per week 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 as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;

(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 three business days, excluding state holidays.

(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.

(d) A transfer may not include in increase but may include a decrease in actual wage.

(e) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(f) Except as provided in R477-4-5, an employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and may not be eligible for a longevity increase. Employees shall be eligible for a longevity increase only after they have been above the salary range maximum for 12 months and all other longevity criteria are met.

(g) An employee with a wage that is above the salary range maximum because of a longevity increase, who is transferred or reassigned and remains at or above the salary range maximum, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

(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 III 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, Program II, and Program III as accrued prior to the reduction in force.

(d) Except for employees rehired under the provisions of R477-4-6(2), a rehired employee may be offered any salary within the salary range for the position.

(2) Employees rehired under the Phased Retirement Program pursuant to Utah Code Section 49-11-13 shall be:

(a) Classified as time-limited (TL schedule) for the duration of a phased retirement employment period; and

(b) Placed at or below the employee's wage at the time of retirement. Employees cannot be placed below the minimum of the established salary range of the job.

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 a 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 on a hiring list 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 R477-6-6(10).

(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 government career service system to fill a Schedule B position 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 prescribed in DHRM Rules.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

(b) An assimilated employee shall accrue leave at the same rate as other career service employees with the same seniority.

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

January 1, 2017 67-19-6

Notice of Continuation February 2, 2012 67-20-8

R495. Human Services, Administration.
R495-810. Government Records Access and Management Act.
R495-810-1. Access to Department of Human Services Records.

A. Authority. This rule is authorized by Section 63G-2-204(2) and Section 62A-1-111.

B. Definitions. Words used in this rule are defined in Section 63G-2-103.

C. Requests for Access. Requests for records shall be submitted to any Department of Human Services office. If the record requested is maintained in that office, that office's designated GRAMA Officer will respond to the request. If the record is not maintained in the office where the request is filed, the request will be sent immediately to the appropriate Department of Human Services office.

R495-810-2. Fee Schedule for Records Copies.

A. Fee Rates.

1. Fees for copies are based on the number of records to be copied and are as follows:

a. paper: $.25 per side of sheet;

b. audio tape: $5.00 per tape; and

c. video tape: $15.00 per tape.

2. For records which require compiling and reporting in another format, a fee of $25.00 per hour may be charged, or $50.00 per hour if the request requires programmer/analyst assistance, however no charge may be made for the first quarter hour of staff time.

3. Mailing. The fee for mailing is the actual cost of postage.

B. Payment Waiver.

1. The Department of Human Services shall fulfill a record request without charge in accordance with Section 63G-2-203(4).

2. The Department shall require payment of future estimated fees before beginning to process a request when fees are expected to exceed $50 or the requester has not paid fees from previous requests.

R495-810-3. Records Modification and Clarification.

A. Hearings. Administrative Hearings regarding denied requests to amend records shall be conducted informally in accordance with Administrative Rule 497-100.

KEY: government documents
December 11, 2007 63G-2-204
Notice of Continuation December 13, 2016

R495. Human Services, Administration.
R495-878. Americans with Disabilities Act and Civil Rights Grievance Procedures.
R495-878-1. Authority and Purpose.

(1) This rule is authorized by Section 62A-1-111.

(2) The purpose of this rule is to provide for the prompt and equitable resolution of complaints alleging any violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, by employees of the Department.

R495-878-2. Definitions.

(1) "ADA" means Title II of the Americans with Disabilities Act of 1990.

(2) "ADA/Civil Rights/LEP/Section 504 Coordinator" means the employee assigned by the executive director to facilitate the prompt and equitable resolution of complaints alleging discrimination by employees of the Department.

(3) "Complainant" means an individual who has applied to receive services, is currently receiving services, or who has received services from the Department, or that individual's authorized representative.

(4) "Department" means the Department of Human Services created by Section 62A-1-102, and includes the divisions and offices created by Section 62A-1-105.

(5) "Division Coordinator" means an individual assigned by the executive director to investigate allegations of discrimination by employees of the Department.

(6) "Director" means the head of the division or office of the Department affected by a complaint filed under this rule.

(7) "Executive Director" means the executive director of the department.

(8) "LEP" means Limited English Proficiency.

(9) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

R495-878-3. Filing of Complaints.

(1) A complainant may file a complaint alleging the violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, by employees of the Department.

(2) A complainant shall file a complaint with the Department's ADA/Civil Rights/LEP/Section 504 Coordinator, unless the complaint includes allegations against the ADA/Civil Rights/LEP/Section 504 Coordinator, in which case the complaint shall be filed with the executive director.

(3) A complainant may file a written, oral, or electronic complaint to:

ADA/Civil Rights/LEP/Section 504 Coordinator
Department of Human Services
Executive Directors Office-4th floor
195 North 1950 West
Salt Lake City, Utah 84116; or
dhscivilrightscomplaint@utah.gov; or
(801) 538-4187 (TTY) or Utah Relay 711.

(4) To facilitate a thorough investigation, the complainant should file a written, oral, or electronic complaint with the Department ADA/Civil Rights/LEP/Section 504 Coordinator no later than thirty (30) days from the date of the alleged circumstances giving rise to the complaint. A complaint should include the following information (complaint form available online at http://hs.utah.gov/):

(a) A detailed description of the alleged circumstances which caused the complaint, including dates and locations;

(b) The names and contact information of any and all persons involved in those circumstances;

(c) A detailed description of any actions taken by the complainant to address the complaint; and

(d) The desired result or outcome that the complainant is seeking from the Department.

R495-878-4. Investigation of Complaints.

(1) Within ten (10) days after receipt of the complaint, the ADA/Civil Rights/LEP/Section 504 Coordinator will assign the investigation of the complaint to the applicable Division Coordinator.

(a) The ADA/Civil Rights/LEP/Section 504 Coordinator will retain a copy of the complaint in a central.

(b) Investigations shall be completed within sixty (60) days after receipt of the complaint by the applicable Division Coordinator.

(2) Within ten (10) days after receipt of the complaint from the ADA/Civil Rights/LEP/Section 504 Coordinator, the Division Coordinator will notify the complainant in writing or electronically that an investigation of the complaint has commenced and will provide the deadline upon which the complainant should receive correspondence regarding the outcome of the investigation.

(a) The ADA/Civil Rights/LEP/Section 504 Coordinator shall be provided a copy of this correspondence from the Division Coordinator.

(b) A copy of all correspondence will be included in the ADA/Civil Rights/LEP/Section 504 Coordinator's central file.

(3) The Division Coordinator, or designee under the direction of the Division Coordinator, will conduct the investigation into the complaint and draft a proposed response to the complaint.

(a) The Division Coordinator shall gather and document all available relevant information.

(b) If the Division Coordinator is unable to complete the investigation and make a recommendation within the deadline, the complainant and the ADA/Civil Rights/LEP/Section 504 Coordinator shall be notified of the reason and how much additional time is needed.

R495-878-5. Recommendation and Decision.

(1) Completion of the investigation will result in a decision that the alleged circumstances occurred, did not occur, or could not be substantiated.

(a) If the alleged circumstances did occur, then the recommendation will also include suggestions to address barriers in the future involving similar circumstances.

(b) If the alleged circumstances could not be substantiated, but the Division Coordinator is able to identify areas where DHS practices may be improved, then suggestions may be made to address barriers in the future involving similar alleged circumstances.

(c) The Division Coordinator will be responsible for drafting the initial correspondence to the complainant.

(2) The correspondence will be sent by the Division Coordinator to the Director for final approval and mailing to the complainant.

(a) A copy of the correspondence will be sent to the ADA/Civil Rights/LEP/Section 504 Coordinator, and included in a central file.

(3) Within ten (10) business days after the conclusion of the investigation, the Division Coordinator will notify the complainant in writing concerning the outcome of the investigation.

(a) The Division Coordinator will log in the date that the written response is sent to the complainant to indicate that the complaint is completed.

(4) The Director shall take all reasonable steps to implement the recommendation, including the suggestions to ameliorate barriers in the future involving similar circumstances.

(5) Any of the foregoing deadlines may be reasonably extended for extenuating circumstances. Any extensions of time will be confirmed in writing to the complainant.

R495-878-6. Appeals.

(1) The complainant may appeal the Director's decision to the Executive Director within ten working days after the complainant's receipt of the Director's decision.

(2) The appeal shall be in writing.

(3) The Executive Director may name a designee to assist on the appeal. The ADA/Civil Rights/LEP/Section 504 Coordinator, Division Coordinator, Director, and Director's designee may not be the Executive Director's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The Executive Director or designee shall review the Division Coordinator's recommendation, the Director's decision, and the points raised on appeal prior to reaching a decision. The Executive Director or designee may direct additional investigation as necessary. The Executive Director shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Management and Budget, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; or

(b) require facility modifications;

(6) The Executive Director or designee shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, and shall be delivered to the complainant.

(7) If the Executive Director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing why the final decision is being delayed and the additional time needed to reach a final decision.

R495-878-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107 and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the civil rights of individuals, including but not limited to Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973

KEY: grievance procedures, disabled persons
August 25, 2015 62A-1-111
Notice of Continuation December 13, 2016 63G-3-201(3)
28 CFR 35.107

R527. Human Services, Recovery Services.
R527-3. Definitions.
R527-3-1. 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 identify the terms and definitions used by the Office of Recovery Services/Child Support Services not currently defined by law.

R527-3-2. Definitions.

1. Terms used in this title, R527, are defined in Section 62A-11-103, 62A-11-303, 62A-11-401, and 78B-14-102. In addition, the following terms are defined:

2. "ORS" means the Office of Recovery Services.

3. "ORSIS" means the Office of Recovery Services Computer Information System.

4. "BMC" means the Bureau of Medical Collections.

5. "CIC" means the Bureau for Children in Care.

6. "CSS" means Child Support Services.

7. "MSS" means Management Support Services.

8. "CSU" means the Customer Service Unit.

9. "BFS" means the Bureau of Financial Services.

10. "BET" means the Bureau of Electronic Technology.

11. "OT" means the Office of Technology.

12. "IV-D agency" refers to the state agency that administers a child support program under Title IV-D of the Social Security Act.

13. "IV-D recipient" refers to a person who receives IV-D services.

14. "IV-A" refers to Title IV-A of the Social Security Act.

15. "IV-A agency" refers to the state agency that administers a public entitlement program under Title IV-A of the Social Security Act.

16. "IV-A recipient" refers to a person who receives IV-A benefits.

17. "UIFSA" refers to Title 78B, Chapter 14 (Uniform Interstate Family Support Act) which replaces "URESA", Title 77, Chapter 31 (Uniform Reciprocal Enforcement of Support Act).

18. "AFDC" refers to the former Aid to Families with dependent children program.

19. "FEP" refers to the Family Employment Program which is funded by "TANF" (Federal Temporary Assistance for Needy Families).

20. "Pass-through payment" as used in R527-40-1(3) refers to the first $50 of the current support that ORS collected for a month in which the custodial parent received AFDC. The IV-A agency paid this amount to the AFDC household prior to March, 1997.

21. "IRS" refers to the Internal Revenue Service.

22. "TPL" means Third Party Liability.

23. "CP" means custodial parent.

24. "NCP" means non-custodial parent.

KEY: child support, welfare

November 10, 2009	**62A-1-111**
Notice of Continuation December 13, 2016	**62A-11-103**
	62A-11-107
	62A-11-303
	62A-11-401
	78B-14-102

R527. Human Services, Recovery Services.
R527-253. Collection of Child Support Judgments.
R527-253-1. Purpose and Authority.

1. The Office of Recovery Services (ORS) 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 clarify that ORS has the authority to demand payment in full or to set or reset payment schedules to collect past-due support according to the interests of the state. It also provides a list of some of the legal remedies available to ORS to collect on a judgment.

R527-253-2. Collection of Child Support Judgments.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) may demand and collect immediate payment in full, or may demand and collect payments that will result in payment in full within a period of time that is deemed to meet the interests of the state in child support judgment matters.

2. ORS/CSS may collect a child support judgment through income withholding, liens, tax refund intercepts, and any other legal remedy available. Initiation of a particular remedy shall not limit ORS/CSS from initiating any other remedy at the same time.

KEY: administrative law, child support
October 23, 2012 62A-11-107
Notice of Continuation December 14, 2016 62A-11-320

R527. Human Services, Recovery Services.
R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.
R527-258-1. Purpose and Authority.

1. The Office of Recovery 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 specify the procedures for collection of IV-D child support and arrears payments after the obligor has been released from prison/jail or an in-patient treatment program.

R527-258-2. Collection from Ex-Prisoners.

1. If the obligor has been incarcerated for thirty days or more and notifies the Office of Recovery Services/Child Support Services (ORS/CSS) or the office is made aware of the release within 30 days of the release date, the office will only collect current support and one dollar toward the past-due support debt for six months after the incarceration release date.

2. The ORS/CSS will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

R527-258-3. Enforcing Child Support When the Obligor is an Ex-Prisoner.

1. The federal title IV-A past-due support debt which accrued while the obligor was incarcerated may be forgiven one time, if the obligor makes both the full monthly current support payment and the full monthly assessed payment toward the past-due support debt for twelve consecutive months. The twelve consecutive month period begins when the obligor is released and they have contacted the office to make payment arrangements within the allotted 30 days.

2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent period of incarceration shall be forgiven. IV-A debt forgiveness due to incarceration will only occur one time per obligor.

3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS/CSS.

4. The obligor's arrearage payment shall be reassessed by the office if his/her financial situation changes during the twelve-month period.

R527-258-4. Collection from Obligors in Treatment Programs.

1. If the obligor is in an in-patient, licensed mental health or substance abuse treatment program for thirty days or more, no collection or enforcement action will be taken to collect the past-due support debt for the duration of the in-patient treatment.

2. If the obligor is in an in-patient, licensed mental health or substance abuse treatment program and notifies ORS/CSS or the office is made aware of the release within 30 days of the release date, the office will only collect current support and one dollar toward the past-due support debt for six months after the in-patient program release date.

3. If the obligor is involved in an out-patient treatment program and notifies ORS/CSS or the office is made aware of the treatment within 30 days of the treatment beginning, the office will only collect current support and one dollar toward the past-due support debt for six months after:

a. the obligor's initial contact with the office, or

b. the office determines that the individual is involved in an out-patient treatment program.

4. ORS/CSS will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

R527-258-5. Enforcing Child Support When the Obligor Is in a Treatment Program.

1. The federal title IV-A past-due support debt which accrued while the obligor was in an in-patient treatment program may be forgiven one time, if the full monthly current support payment and the full monthly assessed payment toward the past-due support debt have been made for twelve consecutive months. The twelve consecutive month period begins when the obligor has been released from an in-patient treatment program and s/he has contacted the office to make payment arrangements within the allotted 30 days.

2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent treatment period shall be forgiven. IV-A debt forgiveness due to participation in an in-patient or out-patient treatment program will only occur one time per obligor.

3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS/CSS.

4. The obligor's arrearage payment shall be reassessed by the office if his/her financial situation changes during the twelve-month period.

KEY: administrative law, child support

February 22, 2013	**62A-11-107**
Notice of Continuation December 13, 2016	**62A-11-320(1)**
	62A-11-326.1
	45 CFR 303.31
	45 CFR 303.32

R590. Insurance, Administration.
R590-102. Insurance Department Fee Payment Rule.
R590-102-1. Authority.

This rule is adopted pursuant to Subsections 31A-3-103(3), which require the commissioner to publish the schedule of fees approved by the legislature and to establish deadlines for payment of each of the various fees.

R590-102-2. Purpose and Scope.

(1) The purposes of this rule are to:

(a) publish the schedule of fees approved by the legislature;

(b) establish fee deadlines; and

(c) disclose this information to licensees and the public.

(2) The rule applies to:

(a) all persons engaged in the business of insurance in Utah;

(b) all licensees;

(c) applicants for licenses, registrations, certificates, or other similar filings; and

(d) all persons requesting services provided by the department for which a fee is required.

R590-102-3. Definitions.

In addition to the definitions in Title 31A, the following definitions shall apply for the purposes of this rule:

(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, title insurers, and a prescription drug plan.

(2) "Agency" means:

(a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization required to be licensed under Subsections 31A-23a-301, 31A-25-207, and 31A-26-209.

(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, sponsored captive, and special purpose financial captive.

(4) "Deadline" means the final date or time:

(a) imposed by:

(i) statute;

(ii) rule; or

(iii) order, and

(b) by which

(i) a payment must be received by the department without incurring penalties for late payment or non-payment; or

(ii) required information must be received by the department without incurring penalties for late receipt or non-receipt.

(5) "Fee" means an amount set by the commissioner, by statute, or by rule and approved by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.

(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(8) "Limited-line agency" includes bail bond and limited-line producer.

(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.

(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider and health discount program.

(11) "Paper application" means an application that must be manually entered into the department's database because the application was submitted by paper, facsimile, or email when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application.

(12) "Paper filing" means a filing that must be manually entered into the department's database because the filing was submitted by paper, facsimile, or email when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing.

(13) "Received by the department" means:

(a) the date delivered to and stamped received by the department, if delivered in person;

(b) the postmark date, if delivered by mail;

(c) the delivery service's postmark date or pick-up date, if delivered by a delivery service; or

(d) the received date recorded on an item delivered, if delivered by:

(i) facsimile;

(ii) email; or

(iii) another electronic method; or

(e) a date specified in:

(i) a statute;

(ii) a rule; or

(iii) an order.

R590-102-4. General Instructions.

(1) Any fee payable to the department not included in Subsections R590-102-5 through 19, shall be due when service is requested, if applicable, otherwise by the due date on the invoice.

(2) Payment.

(a) A non-electronic payment processing fee will be added to a payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment.

(b) Check.

(i) Checks shall be made payable to the Utah Insurance Department.

(ii) A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided.

(iii) Late fees and other penalties, resulting from the voided action will apply until proper payment is made.

(iv) A check payment that is dishonored is a violation of this rule.

(c) Cash. The department is not responsible for un-receipted cash that is lost or misdelivered.

(d) Electronic.

(i) Credit Card.

(A) Credit cards may be used to pay any fee due to the department.

(B) Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided.

(C) Late fees and other penalties, resulting from the voided action, will apply until proper payment is made.

(D) A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH).

(A) Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information.

(B) Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided.

(C) Late fees and other penalties resulting from the voided action will apply until proper payment is made.

(D) An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See R590-102-15.

R590-102-5. Admitted Insurer and Prescription Drug Plan Fees.

(1) Annual license fees:

(a) certificate of authority, initial license application - due with license application: $1,000;

(b) certificate of authority - renewal - due by the due date on the invoice: $300;

(c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: $350;

(d) certificate of authority - reinstatement - due with application for reinstatement: $1,000.

(2) Other license fees:

(a) certificate of authority - amendments - due with request for amendment: $250;

(b)(i) Form A - application for merger, acquisition, or change of control, due with filing: $2,000.

(ii) Expenses incurred for consultant(s) services necessary to evaluate a Form A will be charged to the applicant and due by the due date on the invoice;

(c) redomestication filing - due with filing: $2,000; and

(d) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: $1,000.

(3) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business - due annually on March 1;

(b) filing holding company registration statement - Form B;

(c) filing application for material transactions between affiliated companies - Form D;

(d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(e) application for individual license to solicit in accordance with the stock solicitation permit.

(4) Annual service fee:

(a) Due annually by the due date on the invoice.

(b) A prescription drug plan is exempted from payment of a service fee.

(c) The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.

(d) Fee schedule:

(i) $0 premium volume: no service fee;

(ii) more than $zero but less than $1 million in premium volume: $700;

(iii) $1 million but less than $3 million in premium volume: $1,100;

(iv) $3 million but less than $6 million in premium volume: $1,550;

(v) $6 million but less than $11 million in premium volume: $2,100;

(vi) $11 million but less than $15 million in premium volume: $2,750;

(vii) $15 million but less than $20 million in premium volume: $3,500; and

(viii) $20 million or more in premium volume: $4,350.

(e) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) report filing, all lines of insurance;

(ix) rate filing, all lines of insurance; and

(x) form filing, all lines of insurance.

(f) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

(5) Other fees:

(a) E-commerce fee: (see R590-102-18).

(b) Insurer examination costs reimbursements from examined insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-6. Surplus Lines Insurer, Accredited Reinsurer, Trusteed Reinsurer, and Employee Welfare Fund Administative/Service Fees.

(1) Initial Fee - due with application, alien surplus lines insurers file Utah State Alien Surplus Lines Information Form $1,000.

(2) Annual Fee - due annually by the due date on the invoice: 500;

(3) Late annual payment - due for any annual payment paid after the due date on the invoice: 550;

(4) Reinstatement - due with application, alien surplus insurers submit request for reinstatement: $1,000;

(5) The initial or annual surplus line fee includes the surplus lines annual statement filing for:

(a) U.S. companies - due annually on May 1; and

(b) foreign companies - due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled.

(6) The initial or annual accredited reinsurer and trusteed reinsurer license fee includes the annual statement filing - due annually on March 1.

(7) The annual fee includes the following services for which no additional fee is required and is paid in advance:

(a) filing of power of attorney; and

(b) filing of registered agent.

(8) Other fees: E-commerce fee: see R590-102-18.

R590-102-7. Other Organization Fees.

(1) Annual license fee:

(a) initial - due with application: $250;

(b) renewal - due annually by the due date on the invoice: $200;

(c) late renewal - due for any renewal paid after the date on the invoice: $250;

(d) reinstatement - due with application for reinstatement: $250;

(e) The annual other organization initial or renewal fee

includes the risk retention group annual statement filing - due annually on May 1.

(2) Annual service fee - due annually by the due date on the invoice: $200.

(a) The annual service fee includes the following services for which no additional fee is required:

(i) filing of power of attorney;

(ii) filing of registered agent; and

(iii) rate, form, report or service contract filing.

(b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

(3) Other fees: E-commerce fee: see R590-102-18.

R590-102-8. Captive Insurer Fees.

(1) Initial license application - due with license application: $200.

(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.

(3) Annual license fees:

(a) initial - due by the due date on the invoice: $5,000;

(b) renewal - due by the due date on the invoice: $5,000;

(c) late renewal - due for any renewal paid after the date on the invoice: $5,050;

(d) reinstatement - due with application for reinstatement: $5,050.

(4) Other fees:

(a) e-commerce fee: see R590-102-18.

(b) Examination costs reimbursements from examined captive insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-9. Life Settlement Provider Fees.

(1) Annual license fees:

(a) initial - due with application: $1,000;

(b) renewal - due by the due date on the invoice: $300;

(c) late renewal - due for any renewal paid after the date on the invoice: $350;

(d) reinstatement - due with reinstatement application: $1,000.

(2) Annual service fee - due by the due date on the invoice: $600.

(a) The annual service fee includes the following service for which no additional fee is required: rate, form, report or service contract filing.

(b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

(3) Other fees:

(a) e-commerce fee: see R590-102-18; and

(b) examination costs reimbursements from examined viatical settlement providers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-10. Professional Employer Organization (PEO) Fees.

(1) Annual license fees:

(a) PEO - not certified by an assurance organization:

(i) initial - due with application: $2,000;

(ii) renewal - due by the due date on the invoice: $2,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: $2,050;

(iv) reinstatement - due with reinstatement application: $2,050;

(b) PEO - certified by an assurance organization:

(i) initial - due with application: $2,000;

(ii) renewal - due by the due date on the invoice: $1,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: $1,050;

(iv) reinstatement - due with reinstatement application: $1,050;

(c) PEO - small operator:

(i) initial - due with application: $2,000;

(ii) renewal - due by the due date on the invoice: $1,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: $1,050;

(iv) reinstatement - due with reinstatement application: $1,050.

(5) E-commerce fee: see R590-102-18.

R590-102-11. Individual Resident and Non-Resident License Fees.

(1) Biennial resident and non-resident full-line individual initial license or renewal fee:

(a) initial license fee - due with application: $70:

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $70;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $120.

(2) Biennial resident and non-resident limited-line individual initial or renewal license fee:

(a) initial license fee - due with application: $45;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $45;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $95.

(3) Other license fees: addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: $25.

(4) The biennial initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) individual continuing education services.

(5) The biennial initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(6) Other fees:

(a) e-commerce fee: see R590-102-18; and

(b) title insurance product or service approval for dual licensed title licensee form filing fee - due with filing: $25.

R590-102-12. Agency License Fees, Other than Bail Bond Agencies.

(1) Biennial resident and non-resident agency initial or renewal license for a full-line agency and for a limited-line agency:

(a) initial license fee - due with application: $75;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $75;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $125;

(d) resident title license:

(i) initial license fee - due with application: $100;

(ii) renewal license fee, if renewed prior to license expiration date - due with renewal application: $100.

(iii) reinstatement license fee, if reinstated within one year following the license inactivation date -- due with application for reinstatement: $150.

(2) Other license fees: addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: $25.

(3) The biennial initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license - initial;

(e) filing of producer designation to agency license - termination;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

(4) Other fees: E-commerce fee: see R590-102-18.

R590-102-13. Bail Bond Agency.

(1) Annual bail bond agency per annual license period:

(a) initial license fee - due with application: $250;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $250;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $300.

(2) The annual initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license - initial;

(e) filing of producer designation to agency license - termination;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

(3) E-commerce fee: see R590-102-18.

R590-102-14. Health Insurance Purchasing Alliance.

(1) Annual license fee:

(a) initial - due with application: $500;

(b) renewal - due by the due date on the invoice: $500;

(c) late renewal - due for any renewal paid after the date of the invoice: $550; and

(d) reinstatement - due with application for reinstatement: $500.

(2) E-commerce fee: see R590-102-18.

R590-102-15. Continuing Education Fees.

(1) Annual continuing education provider license fees per annual license period:

(a) initial license fee - due with application: $250;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $250;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $300.

(2) Continuing education course post-approval fee - due with request for approval: $5 per credit hour, minimum fee $25.

R590-102-16. Non-electronic Processing or Payment Fees.

(1) Non-electronic filing processing fee - assessed on a non-electronic filing when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing - due with each paper non-electronic filing or by the due date on the invoice: $5.

(2) Non-electronic application processing fee - assessed on a non-electronic application when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application - due with each paper non-electronic application or by the due date on the invoice: $25.

(3) Non-electronic payment processing fee - assessed on a non-electronic payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment - due with each non-electronic payment or by the due date on the invoice: $25.

R590-102-17. Dedicated Fees.

The following are fees dedicated to specific uses:

(1)(a) annual fraud assessment fee as calculated under Section 31A-31-108 and stated in the invoice - due by the due date on the invoice;

(b) late fee -- due for any fraud assessment fee paid after the due date on the invoice: $50;

(2) annual title insurance regulation assessment fee as calculated under Section 31A-23a-415 and Rule R592-10 and stated in the invoice - due by the due date on the invoice;

(3) annual title assessment for the Title Recovery, Education, and Research Fund fee:

(a) individual title licensee applicant for initial license or renewal license - due with the initial application or the renewal application: $15;

(b) agency title licensee applicant - due with the initial application: $1,000;

(c) annual agency title licensee assessment based on annual written title insurance premium - due by the due date on the invoice:

(i) Band A: $0 to $1 million: $125;

(ii) Band B: more than $1 million to $10 million: $250;

(iii) Band C: more than $10 million to $20 million: $375;

(iv) Band D: more than $20 million: $500;

(4) relative value study book fee - due when book purchased or by invoice due date: $10;

(5) mailing fee for books - due if book is to be mailed to purchaser: $3;

(6) fingerprint fee - due with application for individual license:

(a) Bureau of Criminal Investigation (BCI): $20.00; and

(b) Federal Bureau of Investigation (FBI): $16.50;

(7) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice due by the due-date on the invoice.

R590-102-18. Electronic Commerce Dedicated Fees.

(1) E-commerce and internet technology services fee:

(a) admitted insurer and surplus lines insurer - due with the initial, annual, renewal, or reinstatement application: $75;

(b) captive insurer - due with the initial, annual renewal, or reinstatement application: $250;

(c) other organization, professional employer organization, and life settlement provider - due with the initial, annual renewal, or reinstatement application: $50;

(d) continuing education provider - due with the initial, annual renewal, or reinstatement application: $20;

(e) agency - due with the initial, biennial renewal, or reinstatement application: $10;

(f) health insurance purchasing alliance - due with the initial, annual renewal, or reinstatement application: $10; and

(g) individual - due with the initial, biennial renewal, or reinstatement application: $5.

(2) Database access fees:

(a) information accessed through an electronic portal set up for that purpose - due when the department's database is accessed to input or acquire data: $3 per transaction;

(b) rate and form filing database access to an electronic public rate and form filing:

(i) a separate fee is assessed per line of insurance accessed (accident and health, life and annuity, or property-casualty);

(ii) each line of insurance accessed is charged the

following fees:

(A) a base fee, which entitles the user up to 30 minutes of access, the assistance of staff during that time, and one DVD - $45;

(B) each additional 30 minutes of access time or fraction thereof, including the assistance of staff during that time - $45;

(iii) additional DVD - $2;

(iv) payment due at time of service or by the due date on the invoice.

R590-102-19. Other Fees.

(1) Photocopy fee - per page: $.50.

(2) Complete annual statement copy fee - per statement: $40.

(3) Fee for accepting service of legal process: $10.

(4) Fees for production of information lists regarding licensees or other information that can be produced by list:

(a) printed list, if the information is already in list format and only needs to be printed or reprinted: $1 per page;

(b) electronic list compiled by accessing information stored in the Department's database:

(i) a separate fee is assessed for each list compiled;

(ii) each list is assessed one or more of the following fees:

(A) a base fee, which entitles the requestor up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - $50, due with request for information;

(B) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - $50, due by the due date on the invoice;

(iii) additional CD - $1.00, due by the due date on the invoice.

(5) Returned check fee: $20.

(6) Workers compensation loss cost multiplier schedule: $5.

(7) Address correction fee -- assessed when department has to research and enter new address for a licensee -- due by the due date on the invoice: $35.

(8) Independent Review Organization. Initial application fee -- due with application: $250.

R590-102-20. 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 this provision to other persons or circumstances shall not be affected.

KEY: insurance fees
May 14, 2013 31A-3-103
Notice of Continuation December 12, 2016

R590. Insurance, Administration.
R590-103. Security Deposits.
R590-103-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsections 31A-2-201(3) and 31A-2-206(17), which authorizes rules to implement the Utah Insurance Code.

R590-103-2. Purpose and Scope.

The purpose of this rule is to implement provisions relating to required deposits with the commissioner of insurance and adopt forms for that purpose. This rule applies to all insurance company licensees in this state.

R590-103-3. Rules.

A. The rule on the use of clearing corporations and the federal book-entry system shall be applicable when securities are to be used for purposes of deposit with the state.

B. Securities held by a qualified transfer deposit corporation may be qualified deposits if held in accordance with the rule on the use of clearing corporations and through a qualified custodian.

C. If a declining balance security is deposited with the insurance commissioner, the company depositing the security shall report the balance to the commissioner at least on a quarterly basis. The commissioner may order that a company report these balances monthly.

D. The custodian institution holding deposits, or the state treasurer, shall report on an annual basis to the insurance company and the commissioner the amount of securities held on December 31st of each year. This report shall be submitted by January 15th of the following year. Failure to provide the report shall be grounds for appropriate action by the commissioner. The form of this report shall state the description of the securities, including CUSIP number, the interest rate, the par value, and the date of maturity, and shall satisfy the requirement of Section 31A-2-206(7).

E. Certificates of deposit may be deposited in amounts not to exceed federal insurance limits. The face amount of the certificate of deposit shall be deemed to be the market value.

F. Depository Agreement, Deposit Request and Withdrawal Request forms are available on request from the Insurance Department.

G. Deposits required under these rules shall apply to all insurer licensees in this state. A foreign company may deposit securities in its domiciliary state or another state with comparable deposit statutes or rules. The only acceptable deposits are those held for all policyholders.

R590-103-5. Separability.

If any provision of this rule or its application to any person or circumstance is found for any reason to be invalid, the remainder of the rule may not be affected thereby.

KEY: insurance
May 9, 1997 **31A-2-201**
Notice of Continuation December 12, 2016 **31A-2-206**

R590. Insurance, Administration.
R590-121. Rate Modification Plan Rule.
R590-121-1. Purpose.

The purpose of this rule is to establish criteria for the modification of manual rates through the application of insurer rate modification plans and to the reporting of pertinent information concerning the utilization of such plans, in order to determine whether rates developed thereunder meet the standards of the rating law. Such information may also be utilized to assist in monitoring competition in accordance with Section 31A-19a-201.

R590-121-2. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers; Section 31A-2-203, Examinations; Section 31A-2-204, Conduct of Examinations; Section 31A-2-205, Examination Expenses; Sections 31A-19a-201, 31A-19a-202 and 31A-19a-203, Rate Standards; and Section 31A-23a-402, Unfair Marketing Practices.

R590-121-3. Scope.

1. This rule applies to every authorized property and casualty insurer and every rate service organization required to file rates and supplementary information under Section 31A-19a-203.

2. This rule applies to those classes of insurance, monoline or packaged, commonly known as commercial vehicle, commercial general liability and commercial property, workers' compensation and employers' liability insurance. It does not apply to professional liability insurance, inland marine risks which, by general custom, are not written according to manual rules or rating plans, and consent-to-rate risks submitted under Subsection 31A-19a-203(6).

R590-121-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301 and 31A-19a-102, and in addition thereto the following:

1. "Experience rating plan" means any rating plan or system whereby a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.

2. "Manual rate" means a rate, designed to apply on a generic basis to similar risks within the same market, filed with the department by an insurer or rate service organization and made part of the rating manual used by an insurer or rate service organization.

3. "Rate modification plan" means a rating plan or procedure which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for those characteristics or conditions to the manual rate of a particular insurance risk. The effect of the modification factor is to increase (debit) or decrease (credit) the manual rate. Rate modification plans include plans commonly called Schedule Rating Plans and Individual Risk Premium Modification Plans.

R590-121-5. Rule.

1. Rate modification plans.

Rate modification plans, justified according to the standards herein, are allowed by the insurance code. The commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective, and is unfairly discriminatory. The use of unjustified rate modifications plans in the rating of commercial property and casualty insurance risks located in Utah is prohibited. Pursuant to Subsection 31A-2-201(4), the commissioner may order the disapproval of any rate modification plan that does not establish reasonable standards for measuring probable variations in hazards, expenses, or both, as required by Subsection 31A-19a-202(3). Any insurer subject to such an order may request a hearing pursuant to Subsection 63G-4-203 within 30 days of the date of the order. The following elements shall be considered in determining whether or not a rate modification plan is justified:

a. rate modification plans must limit their application to maximum debits or credits of 25%. Modifications generated by loss experience or company expense experience are not subject to this limitation;

b. rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used;

c. any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverages;

d. rate modification plans must provide that when a risk is rated above the manual rate (debited), an insured, applicant, or their agent or broker, upon request, will be advised by the insurer of the factors which resulted in the adverse rating so that the insured or applicant will be fairly apprized of any corrective action that might be appropriate with respect to the insurance risk;

e. An insurer's filing of changes or revisions to rate modification plans it previously filed may not result in the elimination of a debit or credit established under the prior plan for a risk currently insured by the insurer. Changes in established debits or credits for risks currently insured must be based on a change in the risk and not on a change in the provisions of a rate modification plan.

f. All initial and succeeding filing of rate modification plans must be submitted according to established filing procedures and must include a complete copy of the plan, even if only minor changes are being made. To facilitate the commissioner's analysis of the rate modification plan, the filing must also include a letter or filing memorandum from the insurer which provides: (1) a comparison of the proposed changes to any existing plan as currently filed; (2) reasons and justification for the proposed changes; and (3) a statement of the estimated number of Utah insureds affected by the changes and the estimated Utah premium dollar impact of the changes.

2. Application of rate modification plans.

The following elements shall be considered in determining whether or not the application of a rate modification plan is justified. The commissioner considers the misclassification of a risk to be a modification without justification:

a. rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage or for any other purpose;

b. once a company has filed a rate modification plan, its use is mandatory. The plan must be applied uniformly in a non-discriminatory manner for all eligible classes of risk even if the application of the plan results in a zero modification or no change in a previous modification applied;

c. once a rate modification plan has been applied to a risk and a credit or debit established, no changes in the established credit or debit can be made without appropriate justification and documentation;

d. individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must be present in the file to enable the commissioner to verify compliance with this rule. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk;

e. Individual underwriting files must also contain

documentation of the underwriter's evaluation of the risk under the rate modification plan. This shall consist of a worksheet which describes in some fashion the risk characteristics of the filed plan and the range of credits or debits allowed for each risk characteristic. The completed worksheet shall contain the credits, debits, or both assigned to the risk characteristics by the underwriter and the sum of the credits and debits assigned. A narrative description of the underwriter's evaluation process shall be included in the worksheet. The worksheet shall list the date of the initial and any subsequent evaluation and the signature of the person(s) making the evaluation(s). A previous worksheet may be used where no change in the risk characteristics are indicated as long as a current date and signature are entered onto the worksheet.

3. Experience rating plans.

Experience rating plans shall be calculated from at least the last three years' premium and loss data. Premium and loss figures used in the calculation must be verifiable or justifiable.

4. Reporting of pertinent information.

On the request of the commissioner, an insurer authorized to write any insurance in this state to which this rule applies shall submit data to the commissioner establishing the relationship of the aggregate premiums actually charged policyholders by the insurer for each line of commercial insurance to the aggregate premium that would have been produced by the insurer's filed unmodified rates for that line of commercial insurance. A rate service organization may file the data on behalf of the insurer.

5. Rate compliance examinations.

To determine compliance with this rule the commissioner may order a rate compliance examination be made of any insurer to which this rule applies. Any examination permitted under this rule shall be conducted pursuant to Sections 31A-2-203 and 31A-2-204. All examinations and examination-related expenses shall be paid by the insurer, as provided by Section 31A-2-205.

R590-121-6. Penalties.

Any insurer that fails to comply with the provisions of this rule shall be subject to the forfeiture provisions of Section 31A-2-308.

R590-121-7. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision shall not be affected thereby.

R590-121-8. Dissemination.

Each insurer or rate service organization is instructed to distribute a copy of this rule to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

KEY: insurance law

1994	**31A-2-201**
Notice of Continuation December 12, 2016	**31A-2-203**
	31A-19a-201
	31A-19a-202
	31A-19a-203
	31A-23-302

R590. Insurance, Administration.
R590-126. Accident and Health Insurance Standards.
R590-126-1. Authority.

This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:

(1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;

(2) Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee;

(3) Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health polices;

(4) Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors;

(5) Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance;

(6) Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable; and

(7) Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims.

R590-126-2. Purpose and Scope.

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) This regulation applies to:

(i) all individual accident and health insurance policies and group supplemental health policies and certificates, delivered or issued for delivery in this state on and after January 1, 2006, that are not specifically exempted from this regulation, regardless of:

(A) whether the policy is issued to an association; a trust; a discretionary group; or other similar grouping; or

(B) the situs of delivery of the policy or contract; and

(ii) all dental plans and vision plans.

(b) This rule shall not apply to:

(i) employer accident and health insurance, as defined in Section 31A-22-502;

(ii) policies issued to employees or members as additions to franchise plans in existence on the effective date of this regulation;

(iii) Medicare supplement policies subject to Section 31A-22-620; or

(iv) civilian Health and Medical Program of the Uniformed Services, Chapter 55, title 10 of the United States Code, CHAMPUS supplement insurance policies.

(3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

R590-126-3. Definitions.

In addition to the definitions of Section 31A-1-301 and Subsection 31A-22-605(2), the following definitions shall apply for the purpose of this rule.

(1) "Accident," "accidental injury," and "accidental means" shall be defined to employ result language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.

(b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.

(2) "Adult Day Care" shall mean a facility duly licensed and operating within the scope of such license. Adult Day Care facility may not be defined more restrictively than providing continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(3) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

(4) "Complications of Pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(5) "Conditionally Renewable" means renewal can be declined by class, by geographic area or for stated reasons other than deterioration of health.

(6) "Convalescent Nursing Home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(7) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

(i) to correct damage caused by injury or sickness;

(ii) for reconstructive treatment following medically necessary surgery;

(iii) to provide or restore normal bodily function; or

(iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(8) "Custodial Care" shall mean a Plan of Care, which does not provide treatment for sickness or injury, but is only for the purpose of meeting personal needs and maintaining physical condition when there is no prospect of effecting remission or restoration of the patient to a condition in which care would not be required. Such care may be provided by persons without nursing skills or qualifications. If a nursing care facility is only providing custodial or residential care, the level of care may be so characterized.

(9) "Disability Income" shall mean income replacement as defined in Section 31A-1-301.

(10) "Elimination Period" or "Waiting Period" means the length of time an insured shall wait before benefits are paid

under the policy.

(11) "Enrollment Form" shall mean application as defined in Section 31A-1-301.

(12) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices, which are not accepted as a valid course of treatment by the Utah Medical Association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(13) "Group Supplemental Health Insurance" means group accident and health insurance policies and certificates providing hospital confinement indemnity, accident only, specified disease, specified accident or limited benefit health coverage.

(14) "Guaranteed Renewable" means renewal cannot be declined by the insurance company for any reasons, but the insurance company can revise rates on a class basis.

(15) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(16) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(17) "Home Health Care" shall mean services provided by a home health agency.

(18) "Homemaker" shall mean a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(19) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(20) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(21) "Hospital" means a facility that is licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(22) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which confinement is required.

(23) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(24) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(25) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act, 42 U.S.C. section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(26) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(27) "Non-Cancelable" means renewal cannot be declined nor can rates be revised by the insurance company.

(28) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse, or licensed practical nurse. If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(29) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(30) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(31) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(32) "One Period of Confinement" shall mean consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy up to a maximum of 180 days.

(33) "Optionally Renewable" means renewal is at the option of the insurance company.

(34) "Partial Disability" shall be defined in relation to the individual's inability to perform one or more, but not all, of; the major, important, or essential duties of employment or occupation; customary duties of a homemaker or dependent; or may be related to a percentage of time worked or to a specified number of hours or to compensation.

(35) "Personal Care" shall mean assistance, under a plan of care by a home health agency, provided to persons in activities of daily living.

(36) "Personal Care Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows that person to assist in the activities of daily living and emergency first aid, and who must be supervised by a registered nurse from the home health agency.

(37) "Physician" may be defined by including words such as qualified physician or licensed physician. The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided

pursuant to applicable laws.

(38) "Preexisting Condition."

(a) Except as provided in Section (b), a preexisting condition shall not be defined more restrictively than the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a two year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a two year period preceding the effective date of the coverage of the insured person.

(b) A specified disease insurance policy shall not define preexisting condition more restrictively than a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

(39) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(40) "Residential Health Care Facility" shall mean a publicly or privately operated and maintained facility providing personal care to residents who require protected living arrangements which is licensed and operating within the scope of such license.

(41) "Residual Disability" shall be defined in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the major, important, or essential duties of employment or occupation, or to the inability to perform all usual duties for as long as is usually required.

(42) "Respite Care" shall mean provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual insured, by taking over the tasks of that person for a limited period of time. The insured may receive care in the home, or other appropriate community location, or in an appropriate institutional setting.

(43)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(44) "Sickness" means illness, disease, or disorder of an insured person.

(45) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(46) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(47)(a) "Total Disability" shall mean an individual who:

(i) is not engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience; and

(ii) is unable to perform all of the substantial and material duties of his or her regular occupation or words of similar import.

(b) An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

(c) The definition may not exclude benefits based on the individual's:

(i) ability to engage in any employment or occupation for wage or profit;

(ii) inability to perform any occupation whatsoever, any occupational duty, or any and every duty of his occupation; or

(iii) inability to engage in any training or rehabilitation program.

(48)(a) "Usual and Customary" shall mean the most common charge for similar services, medicines or supplies within the area in which the charge is incurred.

(b) In determining whether a charge is usual and customary, insurers shall consider one or more of the following factors:

(i) the level of skill, extent of training, and experience required to perform the procedure or service;

(ii) the length of time required to perform the procedure or services as compared to the length of time required to perform other similar services;

(iii) the severity or nature of the illness or injury being treated;

(iv) the amount charged for the same or comparable services, medicines or supplies in the locality; the amount charged for the same or comparable services, medicines or supplies in other parts of the country;

(v) the cost to the provider of providing the service, medicine or supply; and

(vi) other factors determined by the insurer to be appropriate.

(49) "Waiting Period" shall mean "Elimination Period."

R590-126-4. Prohibited Policy Provisions.

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a probationary period during which no coverage is provided under the policy, subject to the further exception that a policy may specify a probationary period not to exceed six months for specified diseases or conditions and losses resulting from disease or condition related to:

(i) adenoids;

(ii) appendix;

(iii) disorder of reproductive organs;

(iv) hernia;

(v) tonsils; and

(vi) varicose veins.

(b) The six-month period in Subsection (1)(a) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

(c) Accident policies may not contain probationary or waiting periods.

(d) A probationary or waiting period for a specified disease policy shall not exceed 30 days.

(2) Preexisting conditions.

(a) Except as provided in Subsections (b) and (c), a policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate.

(b) A specified disease policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than six months following the issuance of the policy or certificate, unless the preexisting condition is specifically excluded.

(c) A hospital confinement indemnity policy shall not exclude a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured

person unless the preexisting condition is specifically and expressly excluded.

(3) Hospital indemnity. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(4) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

(a) abortion;

(b) acupuncture and acupressure services;

(c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;

(d) administrative exams and services;

(e) alcoholism and drug addictions;

(f) allergy tests and treatments;

(g) aviation;

(h) axillary hyperhidrosis;

(i) benefits provided under:

(i) Medicare or other governmental program, except Medicaid;

(ii) state or federal worker's compensation; or

(iii) employer's liability or occupational disease law.

(j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;

(k) charges for appointments scheduled and not kept;

(l) chiropractic;

(m) complementary and alternative medicine;

(n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

(o) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusion does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

(p) custodial care;

(q) dental care or treatment, except dental plans;

(r) dietary products, except as required by R590-194;

(s) educational and nutritional training, except as required by R590-200;

(t) experimental and/or investigational services;

(u) felony, riot or insurrection, when the insured is a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

(x) gene therapy;

(y) genetic testing;

(z) hearing aids, and examination for the prescription or fitting thereof;

(aa) illegal activities, limited to losses related directly to the insured's voluntary participation;

(bb) incarceration, with respect to disability income policies;

(cc) infertility services, except as required by R590-76;

(dd) interscholastic sports, with respect to short-term nonrenewable policies;

(ee) mental or emotional disorders;

(ff) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

(gg) nuclear release;

(hh) preexisting conditions or diseases as allowed under Subsection R590-126-4(2), except for coverage of congenital anomalies as required by Section 31A-22-610;

(ii) pregnancy, except for complications of pregnancy;

(jj) refractive eye surgery;

(kk) rehabilitation therapy services (physical, speech, and occupational), unless required to correct an impairment caused by a covered accident or illness;

(ll) respite care;

(mm) rest cures;

(nn) routine physical examinations;

(oo) service in the armed forces or units auxiliary to it;

(pp) services rendered by employees of hospitals, laboratories or other institutions;

(qq) services performed by a member of the covered person's immediate family;

(rr) services for which no charge is normally made in the absence of insurance;

(ss) sexual dysfunction;

(tt) shipping and handling, unless otherwise required by law;

(uu) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;

(vv) telephone/electronic consultations;

(ww) territorial limitations outside the United States;

(xx) terrorism, including acts of terrorism;

(yy) transplants;

(zz) transportation;

(aaa) treatment provided in a government hospital, except for hospital indemnity policies;

(bbb) war or act of war, whether declared or undeclared; or

(ccc) others as may be approved by the commissioner.

(5) Waivers. This rule shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(6) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

R590-126-5. General Requirements.

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-126-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:

(a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

(c) The age of the younger spouse shall be used as the

basis for meeting the age and durational requirements of the noncancellation or renewal provisions of the policy. However, this requirement may not prevent termination of coverage of the older spouse upon attainment of stated age limit in the policy, so long as the policy may be continued in force as to the younger spouse to the age or for durational period as specified in said definition.

(3) Cancellation, Renewability, and Termination.

The terms "conditionally renewable," "guaranteed renewable," "noncancellable," or "optionally renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of Subsection R590-126-6(2).

(a) Conditionally renewable. The term "conditionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal for reasons stated in the policy, or may make changes in premium rates by classes.

(b) Guaranteed renewable. The term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force, except that the insurer may make changes in premium rates by classes.

(c) Noncancellable. The term "noncancellable" may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums until the age of 65, during which period the insurer has no right to make unilaterally any change in any provision of the policy to the detriment of the insured.

(d) Optionally renewable. The term "optionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of the policy or may make changes in premium rates by classes.

(e) Notice of nonrenewal shall be given 90 days prior to nonrenewal.

(f) A policy may not be cancelled or nonrenewed solely on the grounds of deterioration of health.

(g) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(4) Optional insureds. When accidental death and dismemberment coverage is part of the accident and health insurance coverage offered under the contract, the insured shall have the option to include all insureds under the coverage and not just the principal insured.

(5) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(6) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits, the policy shall provide an extension of benefits for a pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. This requirement does not apply to a policy that is canceled for the following reasons:

(a) the insured fails to pay the required premiums in accordance with the terms of the plan; or

(b) the insured person performs an act or practice that constitutes fraud in connection with the coverage or makes an intentional misrepresentation of material fact under the terms of the coverage.

(7) Post hospital admission requirement. A policy providing convalescent or extended care benefits following hospitalization shall not condition the benefits upon admission to the convalescent or extended care facility within a period of less than 14 days after discharge from the hospital.

(8) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(9) Recurrent disability. A policy may contain a provision relating to recurrent disabilities, but a provision relating to recurrent disabilities shall not specify that a recurrent disability be separated by a period greater than 6 months.

(10) Time limit for occurrence of loss.

(a) Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, irrespective of total disability.

(b) Disability income benefits, if provided, shall not require the loss to commence less than 30 days after the date of accident, nor shall any policy that the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the coverage was in force.

(11) Specific dismemberment benefits shall not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

(12) A policy providing coverage for fractures or dislocations may not provide benefits only for "full or complete" fractures or dislocations.

(13) Specified disease, also known as critical illness, dread disease, etc., insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities, shall be in the form of a separate endorsement complying with all provisions of this rule. Specified Disease insurance shall not be incorporated into a life insurance policy or annuity contract.

(14) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

R590-126-6. Required Provisions.

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) All applications shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides limited benefits. Review your (policy)(certificate) carefully."

(d) Application forms shall provide a statement regarding the pre-existing waiting period and the requirements to receive any applicable credit for previous coverage.

(e) An application form shall include a question designed to elicit information as to whether the insurance to be issued is

intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(f) All applications for dental and vision plans shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides (dental) (vision) benefits only. Review your (policy) (certificate) carefully."

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The language or specification of the provision shall be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Accident Only Policies.

(a) An accident only policy or certificate shall contain a prominent statement on the first page of the policy or certificate, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections in the policy or certificate, as follows:

Notice to Buyer: This is an accident only (policy)(certificate) and it does not pay benefits for loss from sickness. Review your (policy)(certificate) carefully.

(b) Accident only policies or certificates that provide coverage for hospital or medical care shall contain the following statement in addition to the notice above:

This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(c) An accident-only policy providing benefits that vary according to the type of accidental cause shall prominently set forth in the outline of coverage the circumstances under which benefits are payable that are lesser than the maximum amount payable under the policy.

(8) Age limitation. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy or certificate as originally issued, that fact shall be prominently set forth in the outline of coverage and schedule page.

(9) Disappearance. If a policy or certificate includes a disappearance benefit, payment must be made within the time limits provided by R590-192-9 when proof of loss, satisfactory to the company, is filed and it is reasonable to assume death occurred, but a body cannot be found.

(10) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

(11) Specified Disease Insurance Buyers Guide. An insurer, except a direct response insurer, shall give a person applying for specified disease insurance, a buyer's guide filed with the commissioner at the time of enrollment and shall obtain recipient's written acknowledgement of the guide's delivery. A direct response insurer shall provide the buyer's guide upon request, but not later than the time that the policy or certificate is delivered.

(12) Specified disease policies or certificates shall contain on the first page or attached to it in either contrasting color or in boldface type, at least equal to the size type used for headings or captions of sections in the policy or certificate, a prominent statement as follows:

Notice to Buyer: This is a specified disease (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses. Read your (policy) (certificate) carefully with the outline of coverage and the buyer's guide.

(13) Hospital confinement indemnity and limited benefit health policies or certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (hospital confinement indemnity) (limited benefit health) (policy)(certificate). This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(14) Basic hospital, basic medical-surgical, and basic hospital-medical surgical expense policies and certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (basic hospital) (basic medical-surgical) (basic hospital/medical-surgical) expense (policy)(certificate). This (policy)(certificate) provides limited benefits and should not be considered a substitute for comprehensive health insurance coverage.

(15) Dental and vision coverage policies and certificates shall display prominently by type or stamp on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This (policy) (certificate) provides

(dental) (vision) coverage only.

R590-126-7. Accident and Health Standards for Benefits.

The following standards for benefits are prescribed for the categories of coverage noted in the following subsections. An accident and health insurance policy or certificate subject to this rule shall not be delivered or issued for delivery unless it meets the required standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsection 31A-22-605(5).

Benefits for coverages listed in this section shall include coverage of inborn metabolic errors as required by Section 31A-22-623 and Rule R590-194, and benefits for diabetes as required by Section 31A-22-626 and Rule R590-200, if applicable.

(1) Basic Hospital Expense Coverage.

Basic hospital expense coverage is a policy of accident and health insurance that provides coverage for a period of not less than 31 days during a continuous hospital confinement for each person insured under the policy, for expense incurred for necessary treatment and services rendered as a result of accident or sickness, and shall include at least the following:

(a) daily hospital room and board in an amount not less than:

(i) 80% of the charges for semiprivate room accommodations; or

(ii) $100 per day;

(b) miscellaneous hospital services for expenses incurred for the charges made by the hospital for services and supplies that are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than either:

(i) 80% of the charges incurred up to at least $3000; or

(ii) ten times the daily hospital room and board benefits; and

(c) hospital outpatient services consisting of:

(i) hospital services on the day surgery is performed;

(ii) hospital services rendered within 72 hours after injury, in an amount not less than $250 per accident; and

(iii) x-ray and laboratory tests to the extent that benefits for the services would have been provided if rendered to an in-patient of the hospital to an extent not less than $200;

(d) benefits provided under Subsections (a) and (b) may be provided subject to a combined deductible amount not in excess of $200.

(2) Basic Medical-Surgical Expense Coverage.

Basic medical-surgical expense coverage is a policy of accident and health insurance that provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for and shall include at least the following:

(a) surgical services:

(i) in amounts not less than those provided on a current procedure terminology based relative value fee schedule, up to at least $1000 for one procedure; or

(ii) 80% of the reasonable charges.

(b) anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service rendered by a physician other than the physician, or the physician assistant, performing the surgical services:

(i) in an amount not less than 80% of the reasonable charges; or

(ii) 15% of the surgical service benefit; and

(c) in-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than:

(i) 80% of the reasonable charges; or

(ii) $100 per day.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

Basic hospital/medical-surgical expense coverage is a policy of accident and health which combines coverage and must meet the requirements of both Subsections R590-126-7(1) and (2).

(4) Hospital Confinement Indemnity Coverage.

(a) Hospital confinement indemnity coverage is a policy of accident and health insurance that provides daily benefits for hospital confinement on an indemnity basis.

(b) Coverage includes an indemnity amount of not less than $50 per day and not less than 31 days during each period of confinement for each person insured under the policy.

(c) Benefits shall be paid regardless of other coverage.

(5) Income Replacement Coverage.

Income replacement coverage is a policy of accident and health insurance that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of both that:

(a) contains an elimination period no greater than:

(i) 90-days in the case of a coverage providing a benefit of one year or less;

(ii) 180 days in the case of coverage providing a benefit of more than one year but not greater than two years; or

(iii) 365 days in all other cases during the continuance of disability resulting from sickness or injury;

(b) has a maximum period of time for which it is payable during disability of at least six months except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period for the disability may be one month. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period;

(c) where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required;

(d) a policy which provides for residual disability benefits may require a qualification period, during which the insured shall be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability;

(e) the provisions of this subsection do not apply to policies providing business buyout coverage.

(6) Accident Only Coverage.

Accident only coverage is a policy of accident and health insurance that provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under the policy shall be at least $1,000 and a single dismemberment amount shall be at least $500.

(7) Specified Accident Coverage.

Specified accident coverage is a policy of accident and health insurance that provides coverage for a specifically identified kind of accident, or accidents, for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than $1,000 for accidental death, $1,000 for double dismemberment and $500 for single dismemberment.

(8) Specified Disease Coverage.

Specified disease coverage is a policy of accident and health insurance that provides coverage for the diagnosis and treatment of a specifically named disease or diseases, and includes critical illness coverages. Any such policy shall meet these general provisions. The policy shall also meet the standards set forth in the applicable Subsections R590-126-

7(8)(b), (c) or (d).

(a) General Provisions.

(i) Policy designation. Policies covering a single specified disease or combination of specified diseases may not be sold or offered for sale other than as specified disease coverage under this Subsection (8).

(ii) Medical diagnosis. Any policy issued pursuant to this section which conditions payment upon pathological diagnosis of a covered disease, shall also provide that if a pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted instead.

(iii) Related conditions. Notwithstanding any other provision of this rule, specified disease policies shall provide benefits to any covered person, not only for the specified disease, but also for any other condition or disease directly caused or aggravated by the specified disease or the treatment of the specified disease.

(iv) Renewability. Specified disease coverage shall be at least guaranteed renewable.

(v) Probationary period. No policy issued pursuant to this section may contain a probationary period greater than 30 days.

(vi) Medicaid disclaimer. Any application for specified disease coverage shall contain a statement above the signature of the applicant that no person to be covered for specified disease is also covered by any Title XIX program, designated as Medicaid or any similar name. Such statement may be combined with any other statement for which the insurer may require the applicant's signature.

(vii) Medical Care. Payments may be conditioned upon an insured person's receiving medically necessary care, given in a medically appropriate location, under a medically accepted course of diagnosis or treatment.

(viii) Other insurance. Benefits for specified disease coverage shall be paid regardless of other coverage.

(ix) Retroactive application of coverage. After the effective date of the coverage, or the conclusion of an applicable probationary period, if any, benefits shall begin with the first day of care or confinement, if such care or confinement is for a covered disease, even though the diagnosis is made at some later date.

(x) Hospice. Hospice care is an optional benefit, but if offered it shall meet the following minimum standards:

(A) eligibility for payment of benefits when the attending physician of the insured provides a written statement that the insured person has a life expectance of six months or less;

(B) fixed-sum payment of at least $50 per day; and

(C) lifetime maximum benefit of at least $10,000.

(b) Expense Incurred Benefits. The following benefit standards apply to specified disease coverage on an expense-incurred basis.

(i) Policy limits. A deductible amount not to exceed $250, an aggregate benefit limit of not less than $25,000 and a benefit period of not fewer than three years.

(ii) Copayment. Covered services provided on an outpatient basis may be subject to a copayment, which may not exceed 20%.

(iii) Covered Services. Covered services shall include the following:

(A) hospital room and board and any other hospital-furnished medical services or supplies;

(B) treatment by, or under the direction of, a legally qualified physician or surgeon;

(C) private duty nursing services of a registered nurse, or licensed practical nurse;

(D) x-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;

(E) blood transfusions, and the administration thereof, including expense incurred for blood donors;

(F) drugs and medicines prescribed by a physician;

(G) professional ambulance for local service to or from a local hospital;

(H) the rental of any respiratory or other mechanical apparatuses;

(I) braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;

(J) emergency transportation if, in the opinion of the attending physician, it is necessary to transport the insured to another locality for treatment of the disease;

(K) home health care with a written prescribed plan of care;

(L) physical, speech, hearing and occupational therapy;

(M) special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy and eleostomy appliances;

(N) prosthetic devices including wigs and artificial breasts;

(O) nursing home care for non-custodial services; and

(P) reconstructive surgery when deemed necessary by the attending physician.

(c) Per Diem Benefits. The following benefit standards apply to specified disease coverage on a per diem basis.

(i) Covered services shall include the following:

(A) hospital confinement benefit with a fixed-sum payment of at least $200 for each day of hospital confinement for at least 365 days, with no deductible amount permitted;

(B) outpatient benefit with a fixed-sum payment equal to one half the hospital inpatient benefits for each day of hospital or non-hospital outpatient surgery, radiation therapy and chemotherapy, for at least 365 days of treatment; and

(C) blood and plasma benefit with a fixed-sum benefit of at least $50 per day for blood and plasma, which includes their administration whether received as an inpatient or outpatient for at least 365 days of treatment.

(ii) Benefits tied to confinement in a skilled nursing home or home health care are optional. If a policy offers these benefits, they must equal the following:

(A) fixed-sum payment equal to one-half the hospital inpatient benefit for each day of skilled nursing home confinement for at least 180 days; and

(B) fixed-sum payment equal to one-fourth the hospital inpatient benefit for each day of home health care for at least 180 days.

(C) Any restriction or limitation applied to the benefits may not be more restrictive than those under Medicare.

(d) Lump Sum Benefits. The following benefit standards apply to specified disease coverage on a lump sum basis.

(i) Benefits shall be payable as a fixed, one-time payment, made within 30 days of submission to the insurer, of proof of diagnosis of the specified disease. Dollar benefits shall be offered for sale only in even increments of $1,000.

(ii) Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, e.g., "cancer insurance," "heart disease insurance," the same dollar amounts shall be payable regardless of the particular subtype of the disease, e.g., lung or bone cancer, with one exception. In the case of clearly identifiable subtypes with significantly lower treatment costs, e.g., skin cancer, lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

(9) Limited Benefit Health Coverage.

Limited benefit health coverage is a policy of accident and health insurance, other than a policy covering only a specified disease or diseases, that provides benefits that are less than the standards for benefits required under this Section. These policies or contracts may be delivered or issued for delivery with the outline of coverage required by Section R590-126-8.

R590-126-8. Outline of Coverage Requirements.

(1) Basic Hospital Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(1). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)

BASIC HOSPITAL EXPENSE COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Basic hospital expense coverage is designed to provide, to persons insured, coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physicians or surgeons fees or unlimited hospital expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order: daily hospital room and board; miscellaneous hospital services; hospital out-patient services; and other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(2) Basic Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)

BASIC MEDICAL-SURGICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Basic medical-surgical expense coverage is designed to provide, to persons insured, coverage for medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses or unlimited medical-surgical expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:
surgical services;
anesthesia services;
in-hospital medical services; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsections R590-126-7(3). The items included in the outline of coverage must appear in the sequence prescribed.

TABLE III

(COMPANY NAME)

BASIC HOSPITAL/MEDICAL-SURGICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Basic hospital/medical-surgical expense coverage is designed to provide, to persons insured, coverage for hospital and medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical surgical expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
hospital outpatient services;
surgical services;
anesthesia services;
in-hospital medical services; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(4) Hospital Confinement Indemnity Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(4). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IV

(COMPANY NAME)

HOSPITAL CONFINEMENT INDEMNITY COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Hospital confinement indemnity coverage is designed to provide, to persons insured, coverage in the form of a fixed daily benefit during periods of hospitalization resulting from a

covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below.
A brief specific description of the benefits in the following order:
daily benefit payable during hospital confinement; and
duration of benefit.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefit.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.
Any benefits provided in addition to the daily hospital benefit.

(5) Income Replacement Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(5). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE V

(COMPANY NAME)

INCOME REPLACEMENT COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Income replacement coverage is designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits contained in the policy.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(6) Accident Only Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with policies meeting the standards of Subsection R590-126-7(6). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VI

(COMPANY NAME)

ACCIDENT ONLY COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE
Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of the coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Accident only coverage is designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(7) Specified Accident Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of R590-126-7(7). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VII

(COMPANY NAME)

SPECIFIED ACCIDENT COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Specified accident coverage is designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified accidents. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits, including dollar amounts.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(8) Specified Disease Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of Subsection R590-126-7(8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VIII

(COMPANY NAME)

SPECIFIED DISEASE COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE
Specified disease coverage is designed only as a supplement to a comprehensive health insurance policy and should not be purchased unless you have this underlying coverage.
Persons covered under Medicaid should not purchase it. Read the Buyer's Guide to Specified Disease Insurance to review the possible limits on benefits in this type of coverage.
Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control.
The policy itself sets forth in detail the rights and obligations of both you and your insurance company.
It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Specified disease coverages designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified diseases. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits, including dollar amounts.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate

to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(9) Limited Benefit Health Coverage.

Except for dental or vision plans, an outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates which do not meet the standards of Subsections R590-126-7(1) through (8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IX

(COMPANY NAME)

LIMITED BENEFIT HEALTH COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Limited benefit health coverage is designed to provide, to persons insured, limited or supplemental coverage.
A brief specific description of the benefits, including amounts.
A description of any provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(10) Dental Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with dental plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE X

(COMPANY NAME)

DENTAL COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL DENTAL EXPENSES
OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(11) Vision Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with vision plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XI

(COMPANY NAME)

VISION COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL VISION EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(12) An insurer shall deliver an outline of coverage to an applicant or enrollee prior to or upon the sale of an individual accident and health insurance policy as required in this rule.

(13) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12 point type, immediately above the company name:

NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued.

(14) Outlines of coverage for hospital confinement indemnity, specified disease, or limited benefit policies, which are to be delivered to persons eligible for Medicare by reason of age shall contain the following language, which shall be printed on or attached to the first page of the outline of coverage:

THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People With Medicare available from the company.

(15) Where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(16) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

R590-126-9. Replacement of Accident and Health Insurance Requirements.

(1) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its producer, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (2). The insurer shall retain a copy of the notice. A direct response insurer shall deliver to the applicant, upon issuance of the policy, the notice described in Subsection (3). In no event, however, will the notices be required in the solicitation of the following types of policies: accident-only and single-premium nonrenewable policies.

(2) The notice required by Subsection (1) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE XII

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a policy to be issued by (insert company name) Insurance Company. For your own information and protection, you should be aware of

and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.
The above "Notice to Applicant" was delivered to me on:
.....
(Date)
.....
(Applicant's Signature)

(3) The notice required by Subsection (1) for a direct response insurer shall be as follows:

TABLE XIII

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy.
For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
(To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.
COMPANY NAME

R590-126-10. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule January 1, 2006.

R590-126-11. Severability.

If any provision of this rule or the application thereof 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 shall not be affected thereby.

KEY: health insurance

March 12, 2009	**31A-2-201**
Notice of Continuation December 12, 2016	**31A-2-202**
	31A-21-201
	31A-22-605
	31A-22-623
	31A-22-626

R590. Insurance, Administration.
R590-133. Variable Contracts.
R590-133-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement Title 31A and Subsection 31A-20-106(1)(b)(ii) that gives the commissioner authority to regulate by rulemaking the issuance and sale of variable contracts.

R590-133-2. Definition.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Variable contract," means a policy or contract that provides life insurance or annuity benefits that may vary according to the investment experience of any separate account or accounts maintained by the insurer as to the policy or contract, as provided for in Sections 31A-5-217 and 31A-18-102.

B. "Variable contract producer," means a licensed producer with a variable contracts line of authority.

R590-133-3. Qualification of Insurers to Issue Variable Contracts.

No insurer may deliver or issue for delivery a variable contract within this state unless the insurer is licensed to do a variable life, annuity, or both, business in this state in accordance with Section 31A-20-106.

R590-133-4. Governance of Separate Accounts.

All separate accounts shall be governed specifically by Sections 31A-5-217; 31A-5-217.5; 31A-18-102; 31A-20-106; 31A-21-301 and 31A-22-411 and this rule. They shall be governed generally by the provisions of the code applicable to life insurance companies not explicitly exempted by the code.

R590-133-5. Required Reports.

A. An insurer issuing an individual variable contract providing benefits in variable amounts shall mail to the contract holder at least once in each contract year after the first at the last address known to the insurer, a statement or statements reporting the investments held in the separate account.

B. The insurer shall submit annually to the commissioner a statement of the business of its separate account or accounts in a form as may be prescribed by the National Association of Insurance Commissioners.

C. An insurer issuing an individual variable contract shall mail to the contract holder, at least once in each contract year after the first, at the last address known to the insurer, a statement reporting as of a date not more than four months previous to the date of mailing:

(1) in the case of an annuity contract under which payments have not yet commenced:

(a) the number of accumulation units credited to the contract and the dollar value of a unit; or

(b) the value of the contract holder's account; and

(2) in the case of a life insurance policy, the dollar amount of the death benefit.

R590-133-6. Foreign Insurers.

If the law or rule in the place of domicile of a foreign insurer provides a degree of protection to the contract holders and the public that is substantially equal to that provided by this rule, the commissioner, to the extent deemed appropriate in the commissioner's discretion, may consider compliance with the law or rule as compliance with this rule.

R590-133-7. Licensing of Variable Contract Producers.

A. No producer is eligible to sell, offer for sale, or make a recommendation to purchase or terminate a variable contract unless licensed as a variable contract producer prior to making a solicitation, sale, or recommendation.

B. The licensing as a variable contract producer may not become effective until satisfactorily completing the following requirements:

(1) be licensed in the line of life insurance;

(2) evidence that the applicant has previously passed Financial Industry Regulatory Authority examinations series six or seven and 63. Approval of registration to take the examinations is not acceptable;

(3) evidence of being Utah approved from the Financial Industry Regulatory Authority, Central Registration Depository;

(4) if the applicant is a non-resident, requirements of the state of domicile may be acceptable; and

(5) every application for a license as a variable contract producer shall be accompanied by the appropriate fee designated in the fee schedule adopted by the legislature.

R590-133-8. Additional Provisions Applicable to Variable Contract Producers.

A. A person licensed in this state as a variable contract producer shall immediately report to the commissioner:

(1) any suspension or revocation of the variable contract producer's license or life insurance producer's license in any other state or territory of the United States;

(2) the imposition of any disciplinary sanction imposed upon the producer by any national securities exchange, or national securities association, or any federal, or state or territorial agency with jurisdiction over securities or contracts on a variable basis;

(3) any judgment or injunction entered against the producer on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or rule.

B. The commissioner may reject any application or suspend or revoke or refuse to renew any variable contract producer's license upon any ground that would bar the application or the producer from being licensed to sell life insurance contracts in this state. The statutes governing any proceeding relating to the suspension or revocation of a life insurance producer's license shall also govern any proceeding for suspension or revocation of a variable contract producer's license.

C. Renewal of a variable contract producer's license shall follow the same procedure established for renewal of a life insurance producer's license.

R590-133-9. Disclosure.

A. The following information shall be furnished to an applicant for a variable contract prior to execution of the application:

(1) a summary description of the insurer and its principal activities;

(2) a summary explanation in non-technical terms of the principal variable features of the contract and of the manner in which any variable benefits reflect the investment experience of a separate account;

(3) a brief description of the investment policy for the separate account with respect to the contract;

(4) a list of investments in the separate account as of a date not earlier than the end of the last year for which an annual statement has been filed with the commissioner of the state of domicile; and

(5) summary financial statements of the insurer and the separate account based upon the last annual statement filed with the commissioner, except that for a period of four months after the filing of any annual statement, the summary required may be based upon the annual statement immediately preceding the last annual statement filed with the commissioner.

B. The insurer may include additional information as the insurer deems appropriate.

R590-133-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-133-11. 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 provisions may not be affected.

KEY: variable insurance
October 15, 2012 31A-2-201
Notice of Continuation December 12, 2016 31A-20-106

R590. Insurance, Administration.
R590-176. Health Benefit Plan Enrollment.
R590-176-1. Authority.

The commissioner's authority to promulgate this rule is provided in Sections 31A-2-201(3) and 31A-2-202(2).

R590-176-2. Purpose and Scope.

The purpose and scope of this rule is to provide enrollment requirements under Section 31A-30-108 for carriers who provide health benefit plan coverage to individuals and small employers as stated in Section 31A-30-104.

R590-176-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

(2) "Time period" means the period such as daily, weekly or monthly, as determined by the carrier, in which applications are grouped.

R590-176-4. General Provisions.

(1) Any attempt to selectively or unfairly delay, obstruct or otherwise hinder any person from obtaining coverage under Chapter 30 is a violation of Section 31A-30-108.

(2) Enrollment shall be equally available through all distribution systems.

(3) A carrier may not market or encourage producers to market individual or small employer health benefit plans in such a way that there is a lessened incentive to insure business with greater health risks.

(4) All records regarding enrollment applications and underwriting determinations shall:

(a) be retrievable for examination by the time period the application was received;

(b) include all documents, indicating the applicable date, pertaining to the application and its underwriting; and

(c) be retained for the current year plus three years.

(5) The documents indicated in Subsection (4)(b) would include:

(a) application and date received,

(b) notifications to the applicant and the date of notification;

(c) records used in underwriting and date received; and

(d) underwriting decision and date of decision.

R590-176-5. Application and Enrollment.

(1) Each carrier shall establish a procedure to determine the order of applications. The procedure shall group the applications into consistent time periods. The carrier shall keep a record of all applications for coverage that includes the time period an application is received by the carrier.

(2) All applications shall be treated consistently.

(3)(a) A complete application shall be processed and a written notice of the decision communicated to the applicant within 30 days of the decision.

(b) The carrier may not require that an application be complete in order to qualify as an application for coverage.

(c) If an application is incomplete, within 15 days from receipt of the application a carrier shall notify the applicant of the areas that are incomplete and the information required to complete the application.

(d) Before an application can be rejected as incomplete, applicants shall have at least 30 days after being notified additional information is required to provide the information.

R590-176-6. 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: health insurance
December 2, 2014 31A-2-201
Notice of Continuation December 12, 2016 31A-2-202

R590. Insurance, Administration.
R590-181. Yankee Bond Rule.
R590-181-1. Authority.

This rule is adopted pursuant to Section 31A-18-105(13), which allows the commissioner to authorize investments other than those enumerated in Section 31A-18-105.

R590-181-2. Purpose and Scope.

A. The purpose of this rule is to permit insurers to invest, within the limits prescribed by this rule, in bonds which are denominated in U.S. Dollars and which are issued by foreign governments, or by entities backed by foreign governments, or by corporations not domiciled in the United States of America. Such instruments are commonly referred to as "Yankee Bonds."

B. This rule applies to all insurers transacting business in Utah.

R590-181-3. Definitions.

For the purpose of this rule, the following definitions will apply:

A. A "Yankee Bond" is a fixed income bond issued in U.S. Dollar denominations by foreign governments, by entities whose bonds are guaranteed by foreign governments, or by corporations not domiciled in the United States of America.

B. "Investment Quality" means a quality rating of "1" or "2" assigned by the National Association of Insurance Commissioners' Securities Valuation Office ("SVO"). Yankee Bonds which are not SVO rated at the time of purchase by the insurer must be submitted to the SVO for rating within 90 days of purchase. Bonds which are unrated at the time of purchase by the insurer may be temporarily considered to be investment quality if the insurer can demonstrate to the satisfaction of the commissioner that an SVO rating of "1" or "2" is likely. However, this assumption of quality shall only be in effect until rating by the SVO is completed.

C. "Qualified assets" are defined in section 31A-17-201(2).

R590-181-4. Rule.

A. An insurer may invest in Yankee Bonds of investment quality to the extent of 20% of the insurer's qualified assets.

B. Subject to Subsection C, below, for all investments in Yankee Bonds of investment quailty issued by a single entity, its affiliates, and subsidiaries, an insurer is limited to 3% of the insurer's qualified assets.

C. For all investments in Yankee bonds of Investment Quality issued by entities within any single sovereign foreign nation, an insurer is limited to 5% of the insurer's qualified assets if all the bonds are rated "1" by the SVO and limited to 3% of the insurer's qualified assets if any of the bonds are rated "2" by the SVO.

R590-181-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, the remainder of the rule and the application of this revision to other persons or circumstances may not be affected.

KEY: insurance
February 24, 1997 31A-18-105
Notice of Continuation December 12, 2016

R590. Insurance, Administration.
R590-182. Risk Based Capital Instructions.
R590-182-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the commissioner by Section 31A-2-201 and the specific authority granted by Subsection 31A-17-601(7).

R590-182-2. Scope.

This rule applies to all health organizations, as defined in Subsection 31A-17-601(3), to all life or accident and health insurers, as defined in Subsection 31A-17-601(4), and to all property and casualty insurers, as defined in Subsection 31A-17-601(5) required by Subsections 31A-17-602(1) or 31A-17-610(1)(a) to file risk based capital reports (RBC).

R590-182-3. Rule.

A. The instructions contained in Subsection 31A-17-602(2) shall be used by life or accident and health insurers in preparing and filing RBC reports.

B. The instructions contained in Subsection 31A-17-602(3) shall be used by property and casualty insurers in preparing and filing RBC reports.

C. The instructions contained in Subsection 31A-17-602(4) shall be used by health organizations in preparing and filing RBC reports.

R590-182-4. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance
April 18, 2002 31A-17-601(4)
Notice of Continuation December 12, 2016

R590. Insurance, Administration.
R590-262. Health Data Authority Health Insurance Claims Reporting.
R590-262-1. Authority.

This rule is promulgated pursuant to Subsection 31A-22-614.5(3)(a) to coordinate with the provision of Subsection 26-1-37(2)(b) and Utah Department of Health rules R428-1 and R428-15.

R590-262-2. Purpose and Scope.

(1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

(2) This rule allows the data to be shared with the state's designated secure health information master index person index, Clinical Health Information Exchange (cHIE), to be used:

(a) in compliance with data security standards established by:

(i) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936: and

(ii) the electronic commerce agreements established in a business associate agreement;

(b) for the purpose of coordination of health benefit plans; and

(c) for the enrollment data elements identified in Utah Administrative Rule R428-15, Health Data Authority Health Insurance Claims Reporting.

(3)(a) This rule applies to an insurer offering:

(i) a health benefit plan; or

(ii) a dental plan.

(b) This rule does not apply to:

(i) an insurer that covers fewer than 2500 individual Utah residents:

(ii) a long-term care insurance policy; or

(iii) an income replacement policy.

(c) Except as provided in Subsection (4), this rule does not require a person to provide information concerning a self-funded employee plan.

(4)(a) The submission of health care claims data by an insurer on behalf of a self-funded employee plan is considered mandatory if and only if the self-funded employee plan opts-in under R590-262-7.

(b) An insurer is not obligated to submit data on behalf of a self-funded employee plan that fails to respond to opt-in requests required in R590-262-7.

R590-262-3. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Claim" means a request or demand on an insurer for payment of a benefit.

(2) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires an insurer to report.

(3) "Insurer" means:

(a) a person engaged in the business of offering a health benefit plan or a dental plan, including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator that collects premiums or settles claims for health care insurance policies;

(c) a governmental plan as defined in Section 414(d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code; or

(e) a licensed professional employer organization that is acting as an administrator of a health care insurance policy.

(4) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(5) "Reporting period" means a calendar year.

(6)(a) "Self-funded employee plan" means an employee welfare benefit plan as defined in 29 U.S.C. Section 1002(1) whose health coverage is provided other than through an insurance policy.

(b) Self-funded employee plan does not include:

(i) a governmental plan as defined in Section 414 (d), Internal Revenue Code;

(ii) a non-electing church plan as described in Section 410 (d), Internal Revenue Code; or

(iii) the Public Employees' Benefit and Insurance Program created in Section 49-20-103.

(7) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

R590-262-4. Reporting Requirements.

(1) Each insurer shall submit enrollment, medical claims, and pharmacy data described in R428-15-3 and R590-262-5, where Utah is the patient's primary residence, for services provided in or out of the state of Utah.

(2) Each insurer shall permit the Utah Department of Health to redisclose the enrollment and eligibility information with the state designated entity for the purpose of coordination of benefits.

(3) Each insurer shall submit monthly health care claims data. Each monthly submission is due no later than the last day of the following month.

R590-262-5. Reporting Process.

Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee. The health care claims data shall be formatted and submitted according to the technical specifications.

R590-262-6. Required Data Elements.

(1) The enrollment, medical claims, dental claims, and pharmacy data elements are described in detail in the technical specifications published by the Health Data Committee. Each insurer shall submit data for all fields contained in the submission specifications if the data are available to the insurer.

(2) Each insurer must submit the enrollment files, provider files, professional medical claims, institutional medical claims, and pharmacy claims data elements as required in R428-15.

R590-262-7. Voluntary Opt-In for Self-Funded Employee Plans.

(1)(a) Each insurer providing claim administration services for an employer who maintains a self-funded employee plan shall provide an employer a copy of the APCD Self-funded Employee Health Plan Opt-In form for purposes of determining whether an employer agrees to opt-in to submission of its self-funded employee plan's health care claims data as described in this rule.

(b) An insurer may use a form that they have developed for multi-state use instead of the form referenced in Subsection (1)(a) if the form is substantially similar and is approved by the Office in advance.

(c) Each insurer shall provide the APCD Self-funded Employee Health Plan Opt-In form:

(i) by December 15, 2016 for existing clients; or

(ii) within 15 days after claims administration services are retained and it is determined the employer meets the requirements of this section, for clients retained after December 1, 2016.

(2)(a) Except as provided in Subsections (b) and (c), an opt-in is effective for the reporting period in which it is signed and all future reporting periods. An employer may not opt-in for a partial reporting period.

(b) An opt-in signed by an employer and received by an insurer before March 1, 2017 shall be effective for the claims adjudicated in 2016 and not previously submitted to the Office, if otherwise required by this rule.

(c) An employer that has opted-in may opt-out for subsequent reporting periods by notifying the insurer in writing at least 30 days before the beginning of the next reporting period.

(3) For a self-funded employee plan whose employer has made an affirmative election for the submission of health care claims data, the insurer shall:

(a) include the self-funded employee plan data as part of the insurer's data submission otherwise required by this rule; and

(b) for plans that opt-in before March 1, 2017 as provided in Subsection (2)(b), include claims adjudicated in 2016 that were not previously submitted to the Office.

(4) Each insurer shall file with the Office, annually by January 31 of each year the following for the prior calendar year:

(a) a list of the self-funded employee plans whose employer made an affirmative election for the submission of their health care claim data;

(b) a list of employers who previously filed an opt-in request and have elected to opt-out for future reporting periods as provided under Subsection (2)(c); and

(c) a certification from an officer of the insurer that the insurer has taken reasonable efforts to provide the form to all known required employers; and

(d) a list identifying the employers to whom the form was provided and their contact information.

(5) The APCD Self-funded Employee Health Plan Opt-In form is for use only with self-funded employee plans and does not affect the mandatory reporting otherwise required by this rule.

(6) Nothing in this section requires an insurer to submit claims processed before the insurer was contracted to provide services.

R590-262-8. Third-party Contractors.

The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.

R590-262-9. Insurer Registration.

Each insurer shall register with the Office by completing the registration online at http://health.utah.gov/hda/apd/ no later than 30 days after becoming subject to this rule and annually thereafter by no later than September 1.

R590-262-10. Testing of Files.

Insurers that become subject to this rule shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R590-262-11. Rejection of Files.

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. Paramount among submission requirements are: First Name, Last Name, Member ID, Relationship to Subscriber, Date of Birth, Address, City, State, Zip Code, Sex, which are key data fields that the insurer must submit for each enrolled member and claim. An insurer whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within ten state business days of notice that the data does not meet the submission requirements.

R590-262-12. Replacement of Data Files.

An insurer may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the insurer can establish exceptional circumstances for the replacement.

R590-262-13. Provider Notification.

(1) The following notification must be provided to a person that receives shared data, "This shared data is provided for informational purposes only. Contact the insurer for current, specific eligibility, or benefits coverage determination."

(2) The notification in this Section shall be provided in coordination with provider participation in the master index patient index and the cHIE programs.

R590-262-14. Limitation of Liability.

(1) A person furnishing information of the kind described in this rule is immune from liability and civil action if the information is furnished to or received from:

(a) the commissioner of the Insurance Department, the executive director of the Department of Health, or their employees or representatives;

(b) federal, state, or local law enforcement or regulatory officials or their employees or representatives; or

(c) the insurer that issued the policy connected with the data set.

(2) As provided in Section 26-25-1, any insurer that submits data pursuant to this rule cannot be held liable for having provided the required information to the Office.

R590-262-15. Exemptions and Extensions.

(1) The Office may grant exemptions or extensions from reporting requirements in this rule under certain circumstances.

(2) The Office may grant an exemption to an insurer when the insurer demonstrates that compliance imposes an unreasonable cost.

(a) An insurer may request an exemption from any particular requirement or set of requirements of this rule. The insurer must submit a request for exemption no less than 30 calendar days before the date the insurer would have to comply with the requirement.

(b) The Office may grant an exemption for a maximum of one calendar year. An insurer wishing an additional exemption must submit an additional, separate request.

(3) The Office may grant an extension to an insurer when the insurer demonstrates that technical or unforeseen difficulties prevent compliance.

(a) An insurer may request an extension for any deadline required in this rule. For each deadline for which the insurer requests an extension, the insurer must submit its request no less than seven calendar days before the deadline in question.

(b) The Office may grant an extension for a maximum of 30 calendar days. An insurer wishing an additional extension must submit an additional, separate request.

(4) The insurer requesting an extension or exemption shall include:

(a) The insurer's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

(5) An insurer may exclude from the requirements of this rule an employer who maintains a self-funded employee plan:

(a) with less than 100 individual Utah residents as of the first day of the reporting period that services are provided; or

(b) whose primary place of business is outside the state of Utah and no more than 25% of the employees are residents.

R590-262-16. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided in Section 31A-2-308.

R590-262-17. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R590-262-18. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health insurance claims reporting
December 12, 2016 31A-22-614.5(3)(a)

R612. Labor Commission, Industrial Accidents.
R612-300. Workers' Compensation Rules - Medical Care.
R612-300-1. Purpose, Scope and Definitions.

A. Purpose and scope. Pursuant to authority granted the Utah Labor Commission under Subsection 34A-2-407(9) and Subsection 34A-2-407.5(1) of the Utah Workers' Compensation Act, these rules establish:

1. Reasonable fees for medical care necessary to treat workplace injuries;

2. Standards for disclosure of medical records;

3. Reporting requirements; and

4. Treatment protocols and quality care guidelines.

B. Definitions. The following definitions apply within Rule R612-300:

1. "Heath care provider" is defined by Subsection 34A-2-111(1)(a) as "a person who furnishes treatment or care to persons who have suffered bodily injury" and includes hospitals, clinics, emergency care centers, physicians, nurses and nurse practitioners, physician's assistants, paramedics and emergency medical technicians.

2. "Injured worker" is an individual claiming workers' compensation medical benefits for a work-related injury or disease.

3. "Payor" is the entity responsible for payment of an injured worker's medical expenses';

4. "Physician" is defined by Subsection 34A-2-111(1)(b) to include any licensed podiatrist, physical therapist, physician, osteopath, dentist or dental hygienist, physician's assistant, naturopath, acupuncturist, chiropractor, or advance practice registered nurse.

5. "Workplace injury" is an injury or disease compensable under either the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

R612-300-2. Obtaining Medical Care for Injured Workers.

A. Right of payor to designate initial health care provider.

1. A Payor may adopt managed health care programs. Such programs may designate specific health care providers as "preferred providers" for providing initial medical care for injured workers.

2. A preferred provider program must allow an injured worker to select from two or more health care providers to obtain necessary medical care. At the time a preferred provider program is established, the payor must notify employees of the requirements of the program.

3. If the requirement of subsection A.2. are met, an injured worker subject to a preferred provider program must seek initial medical care from a preferred provider unless:

a. No preferred provider is available;

b. The injured worker believes in good faith that his or her medical condition is not a workplace injury; or

c. Travel to a preferred provider is unduly burdensome.

4. If an injured worker who is subject to a preferred provider program fails to obtain initial medical care from a preferred provider, the payor's liability for the cost of such initial medical care is limited to the amount the payor would have paid a preferred provider. The injured worker may be held personally liable for the remaining balance.

B. Liability for medical expense incurred at payor's direction. If a payor directs an injured worker to obtain an initial medical assessment of a possible work injury, the payor is liable for the cost of such assessment.

1. A medical provider performing an initial assessment must obtain the payor's preauthorization for any diagnostic studies beyond plain x-rays.

C. Injured worker's right to select provider after initial medical care. After an injured worker has received initial care from a preferred provider, the injured worker may obtain subsequent medical care from a qualified provider of his or her choice. The payor is liable for the expense of such medical care.

1. An injured worker's right to select medical providers is subject to subsection D. of this rule, "Limitations to Injured Worker's Right to Change Physicians."

D. Limitations on injured worker's right to change physicians.

1. An injured worker may change health care providers one time without obtaining permission from the payor. The following circumstances DO NOT constitute a change of health care provider:

a. A treating physician's referral of the injured worker to another health care provider for treatment or consultation;

b. Transfer of treatment from an emergency room to a private physician, unless the emergency room was designated as the payor's preferred provider;

c. Medically necessary emergency treatment;

d. A change of physician necessitated by the treating physician's failure or refusal to rate a permanent partial impairment.

2. The injured worker shall promptly report any change of provider to the payor.

3. After an injured worker has exercised his or her one-time right to change health care providers, the worker must request payor approval of any subsequent change of provider. If the payor denies or fails to respond to the request, the injured worker may request approval from the Director of the Division of Industrial Accidents. The Director will authorize a change of provider if necessary for the adequate medical treatment of the injured worker or for other reasonable cause.

4. An injured worker who changes health care providers without payor or Division approval may be held personally liable for the non-approved provider's fees.

E. Hospital or surgery pre-authorization. Except when immediate surgery or hospitalization is medically necessary on an emergency basis, surgery or hospitalization must be pre-authorized by the payor.

1. Within two working days of receipt of a request for authorization, the payor shall notify the physician and injured worker that the request is either approved or denied, or is undergoing medical review.

2. Any medical review of a pending request for authorization must be conducted promptly.

F. Notification required from injured workers leaving Utah. Section 34A-2-604 of the Workers' Compensation Act requires injured workers receiving medical care for a workplace injury to notify the Industrial Accidents Division before leaving the state or locality. Division forms 043 and Form 044 are to be used to provide such notice.

G. Injured worker's right to privacy. No agent of the payor may be present during an injured worker's medical care without the consent of the injured worker. However, if the payor's agent is excluded from a medical visit, the physician and the injured worker shall meet with the agent at the conclusion of the visit or at some other reasonable time so as to communicate regarding medical care and return-to-work issues.

H. Payor's right of medical examination. The payor may arrange for the medical examination of an injured worker at any reasonable time and place. A copy of the medical examination report shall be made available to the Commission upon request.

R612-300-3. Required Reports.

A. Form 123, Physician's Initial Report. Within one week after providing initial medical care to an injured worker, a health care provider shall complete "Form 123 - Physicians' Initial Report." The provider shall fully complete Form 123 according to its instructions. The provider shall then file Form 123 with the Division and payor.

1. Form 123 must be completed and filed for every initial visit for which a bill is generated, including first aid, when the

worker reports that his or her medical condition is work related.

2. If initial medical care is provided by any health care provider other than a physician, Form 123 must be countersigned by the supervising physician.

B. Form 221, Restorative Services Authorization. Form 221, "Restorative Services Authorization Form" required by Subsection R612-300-5. C. 7. shall be filed with both the payor and the Division.

C. Forms 043, Employee's Intent to Leave State, and Form 044, Attending Physician's Statement. These forms are to be submitted to the Division before an injured worker leaves Utah.

D. Form 110, Release to Return to Work. Form 110 shall be mailed by either the health care provider or payor to the injured worker and Division within five calendar days after the health care provider releases the injured worker to return to work.

R612-300-4. General Method For Computing Medical Fees.

A. Adoption of "CPT" and "RBRVS." The Labor Commission hereby adopts and by this reference incorporates:

"Optum 2016 The Essential RBRVS, 2016 1st Quarter Emergency Update," designated as 1761/RBRCU/U1779R--RBRC15/RBRC/U1779R, ("RBRVS" hereafter).

B. Medical fees calculated according to the RBRVS relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology (1 unit per 15 minutes of anesthesia): $57.00;

2. Medicine (Evaluation and Medicine Codes 99201 - 99204 and 99211-99214): $50.00;

3. Pathology and Laboratory: $56.00;

4. Radiology: $58.00;

5. Restorative Services: $50.00;

6. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): $62.00;

7. Other Surgery: $40.00.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

a. neither the CPT/RBRVS or any other provision of these rules address the medical care in question; or

b. application of CPT/RBRVS or other provisions of these rules would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

R612-300-5. Fees for Specific Procedures.

A. Needle procedures: Trigger point injections are reported per muscle. Payment under CPT code 20553 for injections of up to three muscles is the maximum allowed for any one treatment session, regardless of the number of muscles treated.

B. Radiology.

1. The cost of radioisotopes, gadolinium and comparable materials may be charged at the provider's cost plus 15%.

2. When x-rays are reviewed as part of an independent evaluation of the patient, a consultation, or other office visit, the review is included as a part of the basic service to the patient and may not be billed separately.

C. Restorative Services.

1. The following criteria must be met before payment is allowed for restorative services:

a. The patient's condition must have the potential for restoration of function;

b. The treatment must be prescribed by the treating physician;

c. The treatment must be specifically targeted to the patient's condition; and

d. The provider must be in constant attendance during the providing of treatment.

2. No payment is allowed for CPT codes 97024, diathermy; 97026, infrared therapy; 97028, ultraviolet therapy/cold laser therapy; 97005, athletic training evaluations; 97006, athletic training reevaluation.

3. All restorative services provided must be itemized even if not billed.

4. Medical providers billing under CPT codes 97001 through 97610 are limited to payment for a maximum of three procedures/units per visit, or six procedures if different sites are treated. Services billed under CPT codes 97545, 97546 and 97150 require preauthorization and are limited to 4 units per injury. The payor shall pay the three highest valued procedures for each treatment site for the visit.

5. Patient education is to be billed using CPT code 97535 rather than codes 98960 through 98962, and is limited to 4 units per injury claim.

6. The entire spine is considered to be a single body part or unit. For that reason, CPT codes 98941 through 98943 and 98926 through 98929 may not be used for billing purposes.

7. When a change in treatment or a new RSA is required, physicians and physical therapists may bill for one evaluation and up to 2 modalities/procedures. Without an evaluation, they may bill for up to 3 modalities/procedures. With prior authorization from the payor, physicians and physical therapists may make additional billing when justified by special circumstances.

8. Any medical provider billing for restorative services shall file the appropriate version of Form 221, "Restorative Services Authorization (RSA) form" with the payor and the Division within ten days of the initial evaluation. Subjective/objective/ assessment/plan ("SOAP") notes are to be sent to the payor in addition to the RSA form. SOAP notes are not to be sent to the Division unless requested.

a. Upon receipt of the provider's RSA form and SOAP notes, the payor shall respond within ten days by authorizing a specified number of treatments or denying the request. No more than eight treatments may be provided during this ten-day authorization period.

b. A payor may deny the requested treatments for the following reasons:

i. The injury or disease being treated is not work related; or

ii. The payor has received written medical opinion or other medical information indicating the treatment is not necessary. A copy of such written opinion or information must be provided to the injured worker, the medical provider, and the Division.

c. In cases where approval is received for initial treatment, the provider shall submit updated RSA forms and SOAP notes to the payor for approval or denial at least every six treatments.

d. An injured worker or provider may request a hearing before the Division of Adjudication to resolve issues of compensability, necessity of treatment, and compliance with this subsection's time limits.

D. Functional Capacity Evaluations. The following functional capacity evaluations require payor preauthorization and are billed in 15 minute increments under CPT code 97750:

1. A limited functional capacity evaluation to determine an injured worker's dynamic maximal repetitive lifting, walking, standing and sitting tolerance. Billing for this type of evaluation is limited to a maximum of 45 minutes.

2. A full functional capacity evaluation to determine an injured worker's maximum and repetitive lifting, walking, standing, sitting, range of motion, predicted maximal oxygen uptake, as well as ability to stoop, bend, crawl or perform work in an overhead or bent position. In addition, this evaluation includes reliability and validity measures concerning the individual's performance. Billing for this type of evaluation is limited to a maximum of 2.5 hours.

3. A work capacity evaluation to determine an injured worker's capabilities based on the physical aspects of a specific job description. Billing for this type of evaluation is limited to a maximum of 2 hours.

4. A job analysis to determine the physical aspects of a particular job. Billing is not subject to a maximum time limit due to the variability of factors involved in the analysis.

E. Impairment Ratings and Insurance Medical Examinations.

1. Impairment Rating by Treating Physician. Treating physicians shall bill for preparation of impairment ratings under CPT code 99455, with 2.0 RVU assigned/30 minutes.

2. Impairment Rating by Non-Treating Physician. Non-treating physicians may bill for preparation of impairment ratings under CPT code 99456, with 2.65 RVU assigned/30 minutes.

3. Medical Evaluations Commissioned by Payors. The Labor Commission does not regulate fees for medical evaluations requested by payors.

F. Transcutaneous Electrical Nerve Simulators (TENS). No fee is allowed for TENS unless it is prescribed by a physician and supported by prior diagnostic testing showing the efficacy of TENS in control of the patient's chronic pain. TENS testing and training is limited to four (4) sessions and a 30-day trial period but may be extended with written documentation of medical necessity.

G. Electophysiologic Testing. A physician who is legally authorized by his or her medical practice act to diagnose injury or disease is entitled to the full fee for electrophysiologic testing. Physical therapists and physicians who are qualified to perform such testing but who are not legally authorized to diagnose injury or disease are entitled to payment of 75% of the full fee.

H. Dental Injuries.

1. Initial Treatment.

a. If an employer maintains a medical staff or designates a company doctor, an employee requiring treatment for a workplace dental injury shall report to such medical staff or doctor and follow their directions for obtaining the necessary dental treatment.

b. If an employer does not maintain a medical staff or designate a company doctor, or if such medical staff or doctor is unavailable, the injured worker may obtain the necessary dental care from a dentist of his or her choice. The payor shall pay the dentist at 70% of UCR for services rendered.

2. Subsequent treatment.

a. If additional dental care is necessary, the dentist who provided initial treatment may submit to the payor 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 fee to be charged for the additional treatment.

i. The payor shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended with written approval of the Director of the Industrial Accidents Division.

ii. If the payor does not respond to the dentist's request for authorization within 10 working days, the dentist may proceed with treatment and the payor shall pay the cost of treatment as contained in the request for authorization.

iii. If the payor approves the proposed treatment, the payor shall send written authorization to the dentist and injured worker. This authorization shall include the amount the payor agrees to pay for the treatment. If the dentist accepts the payor's payment offer, the dentist may proceed to provide the approved services and shall be paid the agreed upon amount.

iv. If the dentist proceeds with treatment without authorization, the dentist's fee is limited to 70% of UCR.

b. If the dentist who provided initial treatment is unwilling to provide subsequent treatment under the terms outlined in subsection 2.a., above, the payor shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the payor's payment offer.

i. If, after receiving notice that the payor has arranged for the services of a dentist, the injured worker chooses to obtain treatment from a different dentist, the payor shall only be liable for payment at 70% of UCR. The treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

c. If the payor is unable to locate another dentist to provide the necessary services, the payor shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment.

I. Drug testing. Drug screenings for addictive classes of pain medications shall be performed as recommended in the Utah clinical Guidelines on Prescribing Opiates for Treatment of Pain, Utah Department of Health 2009. The collection and billing shall be limited to one 80300 code per date of service, except for unusual circumstances.

J. Procedures for which no fee is allowed. Due to a lack of evidence of medical efficacy, no payment is authorized for the following:

1. Muscle Testing, CPT codes 95832 through 95857;

2. Computer based Motion Analysis, CPT codes 96000 through 96004;

3. Athletic Training Evaluation, CPT codes 97005 and 97006;

4. Acupuncture, CPT codes 97810 through 97814;

5. Analysis of Data, now BR, CPT code 99090;

6. Patient Education, CPT codes 98960 through 98962;

7. Educational supplies, CPT code 99071; or

8. Thermograms, artificial discs, percutaneous diskectomies, endoscopic diskectomies, IDEPT, platelet rich plasma injections, thermo-rhizotomies and other heat or chemical treatments for discs.

R612-300-6. Limitations on Fees for Specific Medical Providers and Non-Physicians.

A. Physician Assistants, Nurse Practitioners, Medical Social Workers, Nurse Anesthetists, and Physical Therapy Assistants. Fees for services performed by physician assistants, nurse practitioners, medical social workers, nurse anesthetists, and physical therapy assistants are set at 75% of the amount that would otherwise be allowed by these rules and shall be billed using an 83 modifier.

B. Assistant Surgeons. Fees for assistant surgeons are limited as follows:

1. Medical doctors, osteopaths and podiatrists, designated with an -80 modifier, are to be paid 20% of the primary surgeon's fee;

2. Minimum paramedicals, designated with an -81 modifier, are to be paid 15% of the primary surgeon's value or 75% of the amount allowed under subsection B. 1., above.

3. When a qualified resident surgeon is not available, 20% of the primary surgeon's fee;

4. Other paramedical assistants, such as surgical assistants, are not billed separately.

C. Home health care. The following fees, which include mileage and travel time, are payable for Home Health Codes 99500 through 99602:

1. RN: $100/ 2 hours
2. LPN: $75 / 2 hours
3. Home Health Aide: $25 / hour + $6 additional 30 min.
4. Speech Therapists: $80 / visit
5. Physical Therapy: $125/ hour
6. Occupational Therapy: $125/ hour
7. Home Infusion Providers are to be paid according to contract between the payor and home infusion provider. If no contract is established, the payor shall pay the amount specified in Days Guidelines and pay UCR or Cost + 15% for the drugs and supplies.

D. Acupuncturists, naturopathic providers and massage therapy. Payor preauthorization is required for any services provided by acupuncturists and naturopaths. Payment for massage therapy is only allowed when administered by a medical provider and billed according to the requirements of Rule R612-300. 5. C, "Restorative Services."

E. Ambulance. Ambulance charges are limited to the rates set by the State Emergency Medical Service Commission.

R612-300-7. Billing and Payment.

A. Billing Limitations.

1. Except as otherwise provided by a specific provision of the Workers' Compensation Act or these rules, an injured worker may not be billed for the cost of medical care necessary to treat his or her workplace injuries.

2. A health care provider may not submit a bill for medical care of an injured worker to both the employer and the insurance carrier.

B. Discounting and down-coding.

1. Discounting or reducing the fees established by these rules is permitted only pursuant to a specific contract between the medical provider and payor.

2. A payor may change the CPT code submitted by a health care provider under the following circumstances:

a. The submitted code is incorrect;

b. Another code more closely identifies the medical care;

c. The medical provider has not submitted the documentation necessary to support the code; or

d. The medical care is part of a larger procedure and included in the fee for that procedure.

3. If a payor changes a code number, the payor shall explain the reason for the change and provide the name and phone number of the payor's claims processor to the medical provider in order to allow further discussion.

C. Place of Treatment. A medical provider's billing for a medical procedure must identify the setting where a procedure was performed.

1. In an office or clinic: Fees for procedures performed in an office or clinic are to be computed using the Non-Facility Total RVU.

2. In a facility setting: Fees for physician services for procedures performed in a facility are to be computed using the "Facility Total RVU," as the facility will be billing for the direct and indirect costs related to the service.

D. Separate Bills. Separate bills must be presented by each medical provider within 30 days of treatment on a HCFA 1500 billing form. All bills must contain the federal ID number of the provider submitting the bill.

E. Hospital Fees.

1. The Labor Commission does not have authority to set fees for hospital care of injured workers. However, hospitals are subject to the Commission's reporting requirements, and fees charged by health care providers for services performed in a hospital are subject to the Commission's fee rules.

2. Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care.

3. All billings must be submitted on a UB92 form, properly itemized and coded, and shall include all documentation, including discharge summary, necessary to support the billing. No separate fee may be charged for billing or documentation of hospital services.

F. Charges for Supplies, Materials, or Drugs.

1. Ordinary supplies, materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for the underlying medical care.

2. Special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure may be billed at cost plus 15% restocking fees and any taxes paid.

G. Miscellaneous.

1. A physician may bill the new patient E and M code when seeing an established patient for a new work injury.

2. Payment for hospital care is limited to the bed rate for semi-private room unless a private room is medically necessary.

3. Non-facility RVS total unit values apply, 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.

4. Items that are a portion of an overall procedure are NOT to be itemized or billed separately.

5. Payors may round charges to the nearest dollar. If this is done on some charges, it must be done with all charges.

H. Prompt Payment and Interest.

1. All bills for medical care of injured workers must be paid within 45 days of submission to the payor unless the bill or some portion of the bill is in dispute. Any portion of the bill not in dispute remains payable within 45 days of billing.

2. As required by Section 34A-2-420 of the Utah Workers' Compensation Act, any award for medical care made by the Commission shall include interest at 8% per annum from the date of billing for such medical care.

I. Billing Disputes. Payors and health care providers shall use the following procedures to resolve billing disputes.

1. The provider shall submit a bill for services with supporting documentation to the payor within one year of the date of service.

2. The payor shall evaluate the bill and pay the appropriate fee as established by these rules.

3. If the provider believes the payor has improperly computed the fee, the provider may submit a written request for reevaluation to the payor. The request shall describe the specific areas of disagreement and include all appropriate documentation. Any such request for re-evaluation must be submitted to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the 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.

5. A payor seeking reimbursement from a provider for overpayment of a bill shall, within one year of the overpayment, submit to the provider a written request for repayment that explains the basis for request. Within 90 days of receipt of the request, the provider shall either make appropriate repayment or respond with a specific written denial of the request.

6. If the provider and payor continue to disagree regarding the proper fee, either party may request informal review of the matter by the Division. Any party may also file a request for hearing on the dispute with the Adjudication Division.

R612-300-8. Travel Allowance for Injured Workers.

A. Payment for Travel to Obtain Medical Care. An

injured worker who must travel outside his or her community to obtain necessary medical care is entitled to payment of meals and lodging. An injured worker is entitled to other travel expenses regardless of distance. Payors shall reimburse injured workers for these expenses according to the standards set forth in State of Utah Accounting Policies and Procedures, Section FIACCT 10-02.00, "Travel Reimbursement".

1. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

2. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

B. Time Limits for Requesting and Paying Travel Expenses.

1. Requests for travel reimbursement must be submitted to the payor for payment within one year after the subject travel expenses were incurred;

2. The payor must pay an injured employee's travel expenses at the earlier of:

a. Every three months;

b. Upon accrual of $100 in such expense; or

c. At closure of the injured worker's claim.

C. Prescriptions. Travel allowance shall not include picking up prescriptions with the following exceptions:

1. Travel allowance will be allowed if documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community;

2. Travel allowance will be allowed in instances where dispensing laws do not allow a medication to be called in to a pharmacy thus requiring an injured worker to physically obtain an original prescription from the provider's office.

R612-300-9. Permanent Impairment Ratings.

A. Utah's 2006 Impairment Guides. The "Utah 2006 Impairment Guides" are incorporated by reference and are to be used to rate a permanent impairment not expressly listed in Section 34A-2-412 of the Utah Workers' Compensation Act.

B. American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition." For those permanent impairments not addressed in either Section 34A-2-412 or the "Utah 2006 Impairment Guides," impairment ratings are to be established according to the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition."

R612-300-10. Medical Records.

A. Relationship between HIPAA and Workers' Compensation Disclosure Requirements. 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 a 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. Disclosures Permitted Without Authorization. A medical provider, without authorization from the injured worker, 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' 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. Disclosures Requiring Authorization.

1. Except as limited in C(3), a medical provider, whose medical records are relevant to a worker's 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. Disclosure Regarding Return to Work. 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. Additional Disclosures Requiring Specific Approval. Requests for medical records beyond what subsections 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. Appeals. A party affected by the decision made by a person in subsection E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Injured Worker's Duty to Disclose Medical Treatment and Providers. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or persons 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. Injured Worker's Right to Contest Requests for Pre-Injury Medical Records. 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. Limitations on Use and Re-disclosure of Medical Information.

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.

4. 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. Permissible Fees for Providing Medical Records. 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 and sent. Actual cost of postage is 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).

5. 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.

6. 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;

a. History and physical;

b. Operative reports of surgery;

c. Hospital discharge summary;

d. Emergency room records;

e. Radiological reports;

f. Specialized test results; and

g. Physician SOAP notes, progress notes, or specialized reports.

h. 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.

R612-300-11. Utilization Review Standards.

A. Purpose of Utilization Review and Definitions.

1. "Utilization Review" is 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 and the review of medical bills to determine whether the medical services were or are necessary to treat a workplace injury. Utilization review does not include:

a. bill review for the purpose of determining whether the medical services rendered were accurately billed, or

b. any system, program, or activity used to determine whether an individual has sustained a workplace injury.

2. Any utilization review system shall incorporate a two-level review process that meets the criteria set forth in subsections B and C of this rule.

3. Definitions. As used in this rule:

a. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment.

b. "Reasonable Attempt" requires at least two phone calls and a fax, two phone calls and an e-mail, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Level I - Initial Request and Review.

1. A health care provider may use Form 223 to request authorization and payment for proposed medical treatment. The provider shall attach all documentation necessary for the payor to make a decision regarding the proposed treatment.

a. Requests for approval of restorative services are governed by the provisions of Section R612-300.5. C. 7. which requires submission of the appropriate RSA form and documentation.

2. Upon receipt of the provider's request for authorization, the payor may use medical or non-medical personnel to apply medically-based criteria to determine whether to approve the request. The payor must:

a. Within 5 business days after receiving the request and documentation, transmit Form 223 back to the physician, in a verifiable manner, advising of the payor's approval or denial of the proposed treatment.

i. If approval is denied, the payor must include with its denial a statement of the criteria it used to make its determination. A copy of the denial must also be mailed to the injured worker.

C. Level II - Review.

1. A health care provider who has been denied authorization or has received no timely response may request a physician's review by completing and sending the applicable portion of Commission Form 223 to the payor.

a. The provider 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.

b. This request for review may be used by a health care

provider who has been denied authorization for restorative services pursuant to Subsection R612-300-5.C.7.

2. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Additional time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

a. The insurer's physician representative must make a reasonable effort to contact the requesting provider to discuss the request for treatment. 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.

b. If the payor again denies approval of the recommended treatment, the payor must complete the appropriate portion of Commission Form 223, and shall include:

i. the criteria used by the payor in making the decision to deny authorization; and

ii. the name and specialty of the payor's reviewing physician;

iii. appeals information.

c. The denial to authorize payment for treatment must then be sent to the physician, the injured worker and the Commission.

3. The payor's failure to respond to the review request within five business days, by a method which provides certification of transmission, shall constitute authorization for payment of the treatment.

D. Mediation and Adjudication. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the injured worker, the final disposition of the case.

1. If the parties agree, the medical dispute will be referred to Commission staff for mediation.

2. If the parties do not agree to mediation, the matter will be referred to the Division of Adjudication for hearing and decision.

E. Reduction of Fee for Failure to Follow Utilization Review Standards.

1. In cases in which a health care provider has received notice of this rule but proceeds with non-emergency medical treatment without obtaining payor authorization, the following shall apply:

a. If the medical treatment is ultimately determined to be necessary to treat a workplace injury, the fee otherwise due the health care provider shall be reduced by 25%.

b. If the medical treatment is ultimately determined to be unnecessary to treat a workplace injury, the payor is not liable for payment for such treatment. The injured worker may be liable for the cost of treatment.

2. The penalty provision in D. 1. shall not apply if the medical treatment in question has been preauthorized by some other non-worker's compensation insurance company or other payor.

R612-300-12. Commission Approval of Health Care Treatment Protocols.

A. Authority. Pursuant to authority granted by Subsection 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: Subsection 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: Subsection 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 Subsection 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 Subsection 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.

R612-300-13. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Service Providers.

A. Purpose and Authority. This rule, established pursuant to U.C.A. Section 78B-8-404, establishes procedures for testing and reporting following a significant exposure of an emergency medical services provider to infectious diseases.

B. Definitions. In addition to the terms defined in Section 78B-8-401, the following definitions apply for purposes of this rule.

1. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

2. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

3. Source Patient means any individual cared for by a pre-hospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, prisoners or persons in the custody of the Department of Corrections, a county correctional facility, or a public law enforcement entity.

4. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

C. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in C.2.

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in C.2.

D. Receiving Facility Responsibility.

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also

have available or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing. In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, a county correctional facility, a public law enforcement entity, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood Borne Pathogen standards.

R612-300-14. Advance Practice Registered Nurse.

A. Authority. This rule is enacted under the authority of 34A-1-104 and 58-31b-803.

B. Requirement. An advanced practice registered nurse who treats an injured worker and prescribes Schedule II controlled substances for chronic pain is subject to the provisions of the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain," July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference.

KEY: workers' compensation, fees, medical practitioners, nurse practitioners

December 22, 2016 **34A-1-104**
34A-2-201

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Daily limit" means the maximum limit, in number or amount, of protected aquatic wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Permanent residence" means, for the purposes of this rule only, the domicile an individual claims pursuant to Utah Code 23-13-2(13).

(y) "Possession limit" means, for purposes of this rule only, two daily limits, including fish in a cooler, camper, tent, freezer, livewell or any other place of storage, excluding fish stored in an individual's permanent residence.

(z) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(aa) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(hh)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(ii) "Underwater spearfishing" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other device to propel a pointed shaft to take fish from under the surface of the water.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, a

Saturday in June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full daily and possession limit.

R657-13-4. Fishing Contests.

All fishing contests shall be held pursuant to R657-58 Fishing Contests and Clinics.

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within Bear Lake as follows:

(i) an individual may fish with up to two poles on the Utah portion of Bear Lake; and

(ii) an individual must comply with Idaho regulations regarding fishing with more than one pole when fishing on the Idaho portion of Bear Lake.

(b) Only one daily limit may be taken in a single day even if licensed in both states. (2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4)).

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one daily limit may be taken in a single day even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Any person possessing a valid Utah fishing license is permitted to fish anywhere on Lake Powell, including the Arizona portion of the reservoir.

(d) A person possessing a valid Arizona fishing license shall be required to purchase a valid Utah reciprocal permit to fish the Utah waters of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than two lines is unlawful, except:

(a) while fishing for crayfish without the use of fish hooks as provided in R657-13-15; or

(b) while fishing through the ice at Flaming Gorge Reservoir as provided in R657-13-7.

(3) No artificial lure may have more than three hooks. (4) No line may have attached to it more than three baited hooks, three artificial flies, or three artificial lures, except for a setline.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With More than One Pole.

(1) A person may use up to two fishing poles to take fish on all waters open to fishing, provided they possess an unexpired fishing or combination license, except as provided in Subsection (2) below.

(2) A person may use up to six lines when fishing at Flaming Gorge Reservoir through the ice. When using more than one line at Flaming Gorge Reservoir, the angler's name shall be attached to each line, pole, or tip-up, and the angler shall check only their lines.

(3) Regardless of the number of poles or lines used, an angler may not take more than one daily limit or possess more than one possession limit. (4) When fishing on waters located within another state, a person must abide by that state's regulations regarding fishing with more than one pole.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2) A person may use up to two lines for angling while setline fishing. (3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to any valid Utah fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with any unexpired Utah fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished. (6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) A person possessing a valid Utah fishing or combination license may engage in underwater spearfishing, only as provided in this Section.

(2) The following waters are open to underwater spearfishing from January 1 through December 31 for all species of game fish, unless specified otherwise by individual water:

(a) Big Sand Wash Reservoir (Duchesne County);

(b) Brown's Draw Reservoir (Duchesne County);

(c) Causey Reservoir (Weber County);

(d) Deer Creek Reservoir (Wasatch County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(e) East Canyon Reservoir (Morgan County), except underwater spearfishing for largemouth and smallmouth bass is

closed from April 1 through the fourth Saturday in June;

(f) Echo Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(g) Electric Lake (Emery County);

(h) Fish Lake (Sevier County), except underwater spearfishing for any game fish is closed from September 16 to the first Saturday in June the following year;

(i) Flaming Gorge Reservoir (Daggett County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(j) Grantsville Reservoir (Tooele County);

(k) Ken's Lake (San Juan County);

(l) Lake Powell (Garfield, Kane and San Juan Counties), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(m) Newcastle Reservoir (Iron County), except underwater spearfishing is closed for all species of game fish other than wipers and rainbow trout;

(n) Pineview Reservoir (Weber County), except underwater spearfishing is closed for:

(i) largemouth and small mouth bass from April 1 through the fourth Saturday in June; and

(ii) tiger musky year round.

(o) Porcupine Reservoir (Cache County);

(p) Recapture Reservoir (San Juan County);

(q) Red Fleet Reservoir (Uintah County);

(r) Rockport Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(s) Sand Lake (Uintah County);

(t) Smith-Moorehouse Reservoir (Summit County);

(u) Starvation Reservoir (Duchesne County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(v) Steinaker Reservoir (Uintah County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(w) Willard Bay Reservoir (Box Elder County); and

(x) Yuba Reservoir (Juab and Sanpete Counties).

(3) Nongame fish, excluding prohibited species listed in Section R657-13-13, may be taken by underwater spearfishing:

(a) in the waters listed in Subsection (2) and at Blue Lake (Tooele County) for tilapia and pacu only; and

(b) during the open angling season set for a given body of water.

(4) The waters listed in Subsections (2) and (3)(a) are the only waters open to underwater spearfishing for game or nongame fish, except carp may be taken by means of underwater spearfishing from any water open to angling during the open angling season set for a given body of water.

(5)(a) Underwater spearfishing is permitted from official sunrise to official sunset only, except burbot may be taken by underwater spearfishing at Flaming Gorge Reservoir (Daggett County) between official sunset and official sunrise.

(b) No other species of fish may be taken with underwater spearfishing techniques at Flaming Gorge Reservoir or any other water in the state between official sunset and official sunrise.

(6)(a) Use of artificial light is unlawful while engaged in underwater spearfishing, except artificial light may be used when underwater spearfishing for burbot at Flaming Gorge Reservoir (Daggett County).

(b) Artificial light may not be used when underwater spearfishing for fish species other than burbot at Flaming Gorge Reservoir.

(7) Free shafting is prohibited while engaged in underwater spearfishing.

(8) The daily limit and possession limit for underwater spearfishing is the same as the daily limit and possession limit applied to anglers using other techniques in the waters listed in Subsections (2) and (3)(a), and as identified in the annual Utah Fishing Guidebook issued by the Utah Wildlife Board.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted while angling, except when underwater spearfishing. However artificial light is permitted while underwater spearfishing for burbot in Flaming Gorge or while fishing for carp with a bow, crossbow, or spear statewide.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(2) and Section R657-13-20.

(3)(a) A person may not possess a gaff while angling, or take protected aquatic wildlife by snagging or gaffing, except:

(i) a gaff may be used at Lake Powell to land striped bass; and

(ii) snagging may be used at Bear Lake to take Bonneville cisco.

(b) Except as provided in Subsection (3)(a)(ii) and Section R657-13-21, a fish hooked anywhere other than the mouth must be immediately released.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, to take protected aquatic wildlife is permitted on many public waters. However, boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful, except as authorized by the Wildlife Board in the Fishing Guidebook.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Big Sand Wash, Deer Creek, Echo, Fish Lake, , Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Red Fleet, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead striped bass, from Lake Powell, may be used as bait only in Lake Powell.

(f) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(g) Dead mountain sucker, white sucker, Utah sucker, redside shiner, speckled dace, mottled sculpin, fat head minnow, Utah chub, and common carp may be used as bait in any water where bait is permitted.

(h) Dead burbot, from Flaming Gorge Reservoir, may be used as bait only in Flaming Gorge Reservoir.

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

(10) On any water declared infested by the Wildlife Board with an aquatic invasive species, or that is subject to a closure order or control plan under R657-60, it shall be unlawful to transport any species of baitfish (live or dead) from the infested water for use as bait in any other water of the State. Baitfish are defined as those species listed in sections (5)(b), (5)(c), (5)(f) and (8).

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);

(d) Flannelmouth sucker (Catostomus latipinnis);

(e) Gizzard shad (Dorosoma cepedianum), except at Lake Powell;

(f) Grass carp (Ctenopharyngodon idella);

(g) Humpback chub (Gila cypha);

(h) June sucker (Chasmistes liorus);

(i) Least chub (Iotichthys phlegethontis);

(j) Northern Leatherside chub (Lepidomeda copei);

(k) Razorback sucker (Xyrauchen texanus);

(l) Roundtail chub (Gila robusta);

(m) Southern Leatherside chub (Lepidomede aliciae);

(n) Virgin River chub (Gila seminuda);

(o) Virgin spinedace (Lepidomeda mollispinis); and

(p) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) As provided in this Section, a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(2)(a) Except as provided in Subsection (2)(b), nongame fish may be taken by angling, traps, bow and arrow, liftnets, dipnets, cast nets, seine, or spear in any water of the state with an open fishing season.

(b) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, crossbow, spear, or underwater spearfishing statewide:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) Provo River (below Deer Creek Dam);

(xvii) Spanish Fork River;

(xviii) Hobble Creek (Utah County);

(xix) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties);

(xx) Raft River (from the Idaho state line, including all tributaries);

(xxi) Weber River; and

(xxii) Yellow Creek.

(c) Nongame fish, may be taken by underwater spearfishing in the waters and under the conditions specified in Section R657-13-9.

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Except as provided in Section R657-13-21, lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than two lines may have hooks attached. On unhooked lines, bait is tied to the line so that the crayfish grasps the bait with its claw; and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1)(a) At all waters except Strawberry Reservoir, Scofield Reservoir, Panguitch Lake, Jordanelle Reservoir and Lake Powell, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir, Scofield Reservoir and Panguitch Lake, and smallmouth bass taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(c) Fish may be filleted at any time and anglers may possess filleted fish at any time at Lake Powell.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4)(a) A person may not :

(i) take more than one daily limit of game fish in any one day; or;

(ii) possess more than one daily limit of each species or species aggregate, unless the additional fish are:

(A) from a previous days catch;

(B) eviscerated; and

(C) within the possession limit for each species or species aggregate.

(b) Fish kept at the angler's permanent residence do not count towards an angler's possession limit for that species or species aggregate.

(c) A person may possess a full possession limit of Bonneville cisco without eviscerating the fish from a previous days catch.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Daily and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Daily limits and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific daily, possession, or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, daily limit, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's daily limit and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5)(a) A person may not:

(i) take more than one daily limit in any one day; or

(ii) possess more than one daily limit of each species or species aggregate unless the additional fish are:

(A) from a previous days catch;

(B) eviscerated; and

(C) within the possession limit for each species or species aggregate.

(b) A person may possess a full possession limit of Bonneville cisco without eviscerating the fish from a previous days catch.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, daily and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-21. Catch-and-Kill Regulations.

(1) The Wildlife Board may designate in proclamation and guidebook waters where anglers are required to kill specified aquatic animal species that are caught.

(2) A person shall immediately kill any aquatic animal caught in a water identified by the Wildlife Board in proclamation or guidebook as catch-and-kill for that species.

(a) An aquatic animal killed subject to a catch-and-kill regulation may be:

(i) retained and consumed by the angler; or

(ii) disposed of:

(A) in the water where the aquatic animal was caught;

(B) at a fish cleaning station;

(C) at the angler's permanent residence; or

(D) at another location where disposal is authorized by law.

(3) A person may not release a live aquatic animal subject to a catch-and-kill regulation in the water it was caught or in any other water in the state.

KEY: fish, fishing, wildlife, wildlife law

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	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-20. Falconry.
R657-20-1. Purpose and Authority.

(1) Under authority of Section 23-17-7 and in accordance with 50 CFR 21 and 22 (10/01/2000), which is incorporated by reference, the Wildlife Board has established this rule for the practice of falconry in the state of Utah.

(2) Take of any raptor species for the practice of falconry must be in compliance with these regulations.

(3) Raptor species possessed under the authority of this rule must be trained in the pursuit of wild game and used in hunting, unless specifically noted otherwise in special provisions granted under this rule.

(4) A federal falconry permit is no longer required for practicing the sport of falconry in the state of Utah.

(5) The Federal Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors listed in Section 10.13 of 50 CFR 21, unless the activities are allowed under provisions of this rule, or are permitted by other applicable state or Federal regulations.

(a) This rule covers all avian species in the Order Accipitriformes (i.e., vultures, California Condor, kites, eagles and hawks), Order Falconiformes (i.e., caracaras, and falcons) and Order Strigiformes (i.e., owls), and hybrids thereof, and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors to use in falconry.

(b) The Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d and 54 Stat. 250) provides for the taking of golden eagles from the wild to use in falconry, and specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(6) Specific season dates, possession limits, open and closed areas, number of permits or CORs, and other administrative regulations for practicing falconry are published in the Utah falconry Guidebook which is available by contacting the Division of Wildlife Resources office in Salt Lake City or online at http://wildlife.utah.gov.

(7) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a valid and applicable state COR or Federal permit is prima facie evidence that the raptor, raptor egg, shell fragment, semen, or any raptor part was illegally taken and is illegally held in possession.

(8) Pursuant to Utah Code Section 23-19-9, the Division has the authority to suspend or revoke any or all of the privileges granted under this rule.

(a) Upon request, a permittee whose COR has been suspended may reapply for a falconry COR, pursuant to the application procedures in this rule, at the end of the suspension period.

(9) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or guidebooks.

R657-20-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and R657-6-2.

(2) In addition:

(a) "Abatement activities" means use of trained raptors to flush, haze or take birds (or other wildlife where allowed) to mitigate depredation problems, including threats to human health and safety.

(b) "Aerie" refers to the nest of any raptor.

(c) "Bate" refers to a hawk or falcon that attempts to fly while being tethered to the falconer's fist, a block or other form of perch, whether from wildness, or for exercise, or in an attempt to chase.

(d) "Business Day" refers to any day the Division is open for business

(e) "Captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

(f) "CFR" means the Code of Federal Regulations.

(g) "COR" for purposes of this rule means a Certificate of Registration (permit) issued by the Division authorizing an individual to participate in the sport of falconry.

(h) "Eyas" means a young raptor not yet capable of sustained flight such as a nestling or fledgling.

(i) "Division" means the Utah Division of Wildlife Resources.

(j) "Falconry" means, for the purposes of this rule, caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. Falconry includes the taking of raptors from the wild to use in the sport of falconry; and caring for, training, and transporting raptors held for falconry.

(k) "Fledged" means the stage in a young raptor's life when the feathers and wing muscles are sufficiently developed for flight. A young raptor that has recently fledged but is still dependent upon parental care and feeding is called a fledgling.

(l) "Form 3-186A" means the Migratory Bird Acquisition and Disposition Report form.

(m) "Hacking" means the temporary or permanent release of a raptor held for falconry to the wild so that it may survive on its own.

(n) "Haggard" means a wild adult raptor.

(o) "Humane treatment" for purposes of this rule means to maintain raptors in accordance with accepted standards for practicing falconry, including care and treatment of a raptor so that it is physically healthy and maintaining raptors under conditions that are known to prevent predictable illness or injury.

(p) "Hybrid" means offspring of birds listed as two or more distinct species including but not limited to those listed in section 10.13 of Subchapter B of 50 CFR 21, or offspring of birds recognized by ornithological authorities as two or more distinct species including but not limited to those listed in section 10.13 of Subchapter B of 50 CFR 21.

(q) "Imping" means to graft new or additional feathers to existing feather shafts on a raptor's wing(s) or tail to repair damage or to increase flying capacity.

(r) "Imprint", for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it has fully feathered. An imprinted bird is considered to be so for its entire lifetime.

(s) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property, or who is a lessee of the property.

(t) "Livestock depredation area" means a specific geographic location in which depredation on livestock by golden eagles has been recognized.

(u) "Marker or band" means a numbered band issued by the Service which, when affixed to a raptor's leg, identifies an individual raptor;

1) permanent, nonreusable (plastic, zip-tie) black-colored numbered leg bands identify an individual raptor that has been taken from the wild;

2) seamless (metal) yellow-colored numbered leg bands identify an individual raptor that has been captive-bred

(a) permanent, nonreusable (plastic, zip-tie) yellow-colored numbered leg bands are used when a seamless band needs to be replaced

(v) "Meet" means, for purposes of this rule, an organized falconry event where protected wildlife may be taken and for which a 5 day non-resident meet hunting license is approved by the Wildlife Board.

(w) "Mews" refers to a protected indoor facility (a residence or non-residence) where raptors are kept for falconry purposes.

(x) "Migratory game bird" means, for the purposes of this rule, ducks, geese, swans, snipe, coot, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(y) "Nest" refers to the structure or place where a raptor lays eggs and shelters its young.

(z) "Passage raptor" means a first-year raptor capable of sustained flight that is no longer dependent upon parental care and/or feeding

(aa) "Raptor" means any bird of the Order Accipitriformes, Order Falconiformes (falcons and caracaras) or the Order Strigiformes (owls) and hybrids thereof unless defined otherwise in this rule.

(bb) "Reasonable time of day" for inspections, or other business, at a falconers facilities refers to hours the Division is open for business, or some other prearranged time between the falconer and the Division representative.

(cc) "Service" means the U.S. Fish and Wildlife Service.

(dd) "Take" means to: hunt, pursue, harass, catch, capture, possess, angle, seine, trap or kill any protected wildlife; or attempt any such action.

(ee) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(ff) "Trial" means, for purposes of this rule, an organized falconry event where European Starling (Sturnella neglecta), House Sparrow (Passer domesticus), Rock Dove/feral pigeon (Columba livia), pen-reared game birds, and lawfully possessed, domestic birds may be taken.

(gg) "Upland game" means, for purposes of this rule, pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Dusky ("Blue") Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, and White-tailed Ptarmigan.

(hh) "Weathering Area" refers to a protected outdoor facility where raptors are kept for falconry purposes.

(ii) "Wild" refers to an animal in its original natural state of existence; not domesticated nor cultivated.

(jj) "Year" refers to a normal calendar year of January 1 to December 31, unless defined otherwise in this rule.

R657-20-3. Minimum Age Requirement.

(1) A person who wishes to practice the sport of falconry in Utah must be at least 12 years of age.

R657-20-4. Falconry COR, Permits, and Licenses.

(1) The division may deny issuing a COR or permit to any applicant, if:

(a) The applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of practicing the sport of falconry bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(c) holding raptors at the proposed location violates federal, state, or local laws.

(2) A COR is not transferrable.

(3) CORs do not provide the holder with any rights of succession.

(4) Any COR issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(5) A resident must possess a valid COR issued by the Division to take, possess, hunt with, or transport raptors for the purpose of practicing the sport of falconry in Utah.

(a) A falconry COR requires up to a 30-business day processing time from the date an application is received.

(b) A falconry COR is valid at the Apprentice Class level for a 3-year period from date of issuance.

(c) A falconry COR is valid at the General and Master Class level for a 5-year period from date of issuance.

(6) The falconer must have a falconry COR or a legible copy of it in their immediate possession when not at the location of their falconry facilities and is trapping, transporting, working with, or flying raptors in falconry.

(7) A falconer must obtain a Raptor Capture Permit prior to capturing or attempting to capture any raptor from the wild in Utah.

(i) A valid falconry COR is required for a Utah resident in order to obtain a Raptor Capture Permit.

(ii) Nonresident falconers are not required to purchase a Utah falconry COR in order to purchase a Nonresident Raptor Capture Permit.

(8) The falconry COR allows a resident falconer to use a raptor for unrestricted take of unprotected wildlife including coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European Starling, House Sparrow, and rock dove or feral pigeon; no other license or permit is required other than the falconry COR for take of these species.

(a) A non-resident falconer is required to have a current falconry license or permit from his/her state of residence and a valid federal falconry permit, if applicable.

(9) With a falconry bird, a falconer may take any species for which a federal Depredation Order is in place under parts 21.43, 44, 45, or 46 of 50 CFR 21, at any time in accordance with the conditions of the applicable depredation order, as long as the falconer is not paid for doing so.

(10) A falconer releasing a raptor for the purpose of hunting protected wildlife, not held in private ownership, must first obtain the appropriate licenses, permits, tags, CORs and stamps as provided in the applicable rules and guide books of the Wildlife Board.

(a) The hunting of upland game shall be done in accordance with the rule and guide book of the Wildlife Board for taking upland game species.

(b) The hunting of migratory game birds shall be done in accordance with the rule and guide book of the Wildlife Board for taking migratory game species.

(c) A hunting license is not required to take pen-reared game birds with a trained raptor.

R657-20-5. Application for a Falconry COR.

(1) To obtain a falconry COR, applicants must have either an indoor mews or an outdoor weathering area, or both pursuant to Section R657-20-6

(2) Resident Applications

(a) A resident applying for or renewing a falconry COR shall:

(i) Submit a completed falconry application to the Division; and

(ii) Include the appropriate COR fee.

(b) As a condition to obtaining a falconry COR, the falconer agrees to reasonable administrative inspections of falconry raptors, facilities, equipment, CORs, and related documents.

(c) Falconry raptors, facilities, equipment, and documents may be inspected by the Division only in the presence of the permittee at a reasonable time of day.

(d) At the time of renewal, the current falconry COR number must be included on the falconry COR renewal application.

(e) A falconer claiming residency in Utah may not claim

residency in, or possess a resident falconry license or falconry permit from, another state.

(f) Resident falconers wishing to renew a valid falconry COR must submit a completed falconry COR renewal form to the Division upon or before the expiration date specified on the current falconry COR.

(i) Falconry COR Renewals require up to a 30-day processing time for completion.

(g) Residents who do not hold a valid falconry COR or do not submit a COR renewal form by the date their current COR lapses and who maintain raptors in possession are in violation of unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3.

(h) Failure to submit required records and timely, accurate, or valid reports may result in administrative action by the Division.

(i) Administrative action that may be taken by the Division includes:

(A) Issuance of a probationary COR with restrictions on activities allowed; or

(B) Non-renewal of a COR until the required records and reports are completed.

(j) A falconry COR is considered to be lapsed if the falconer has not applied for renewal within 30 calendar days of the expiration of their current COR.

(i) Disposition of raptors held under a lapsed falconry COR is at the discretion of the Division.

(ii) Raptors held under a lapsed falconry COR are subject to seizure by the Division.

(k) A falconer who has allowed their COR to lapse may apply for a new COR.

(i) If a falconry COR has lapsed for fewer than 5 years, it will be reinstated at the level held previously if proof of certification at that level is provided and the applicant has appropriate facilities and equipment; and is otherwise qualified under R657-20-4.

(ii) If a falconry COR or Permit has lapsed for 5 years or longer, an applicant must correctly answer at least 80 percent of the questions on an examination administered by the Division as required in Section R657-20-9(1)(b).

(A) If the applicant passes the examination, a falconry COR will be reinstated at the level previously held.

(B) The applicant's facilities and equipment must also pass inspection by a Division representative before possessing a raptor for falconry as required in Sections R657-20-6.

(3) Falconers Wishing to Establish Residency in Utah

(a) A falconer entering Utah to establish residency must possess the following:

(i) A copy of the previous state's valid falconry license indicating class designation, a current federal falconry permit number, if applicable, a valid health certificate, the number and species of raptors with the band number (if banded) of each raptor held in possession, and an entry permit number obtained from the Utah Department of Agriculture must be presented to the Division within 5 business days after entering Utah.

(b) A six-month domicile period is required for a falconer entering Utah to establish residency.

(c) A falconer entering Utah to establish residency may possess legally obtained raptors that were acquired prior to entering Utah.

(i) If the raptor(s) is to be used for falconry during the six-month domicile period, the falconer must purchase all applicable Utah non-resident hunting licenses and/or permits.

(d) A falconer wishing to establish residency must maintain proper facilities and equipment (see Section R657-20-6, R657-20-7, and R657-20-8).

(e) At the conclusion of the six-month domicile period, a new resident applying for a falconry COR must submit the following to the Division:

(i) A completed falconry application indicating class designation;

(ii) A copy of a valid falconry license from the former state of residency indicating class designation;

(iii) A valid federal falconry permit number, if applicable;

(iv) The appropriate COR fee.

(f) A falconer that holds raptors in possession and fails to apply for a falconry COR within 30 days of qualifying for residency will be in violation of the law for unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3 and may be denied a falconry COR, and any raptors in their possession may be subject to seizure.

R657-20-6. Care and Facilities Requirements.

(1) A person may not possess a raptor without first providing adequate facilities and equipment to humanely house and care for the raptor.

(2) Care Requirements.

(a) The Falconer is responsible for the maintenance and security of raptors held in his or her care.

(b) All raptors held under a falconry COR must be kept in humane and healthy conditions.

(i) The Division may impose additional requirements to insure the safe and humane handling and care of raptors when the birds are maintained in inhumane or unhealthy conditions.

(3) Facilities Requirements and Inspections.

(a) The primary consideration for raptor housing facilities whether an indoor mews or outdoor weathering area is protection of the raptor from unauthorized human access and disturbance, the environment, predators (to include domestic as well as wild animals), inhumane treatment, and other undue disturbances.

(b) Request for a facilities inspection must be made by calling the Regional Division office where the facilities are located.

(c) Once a request is received, a facilities inspection will be completed by the Division within 30 business days of the date the request is received.

(d) Before a person may obtain a falconry COR, the raptor housing facilities and equipment shall be inspected by a Division representative.

(i) Inspections must be conducted in the presence of the permittee.

(ii) In the course of this inspection, the Division representative may collect a photograph of the facilities to keep on file with the falconer's other state records.

(e) Detailed photos and a description of facilities and equipment, including measurements of mews or weathering areas, shall constitute a temporary inspection for purposes of issuing COR's if the Division has not physically inspected within 30 business days. The COR may be revoked if the photos and descriptions of facilities and equipment do not match the facilities in place. Any significant changes to facilities require notification to the Division.

(f) Facilities must be adequate to house the number of raptors in possession.

(i) Only inspected and approved indoor mews and weathering areas may be used for housing raptors for falconry.

(g) In conjunction with inspected and approved facilities, raptors may also be housed inside a place of residence as provided in Section R657-20-4(g).

(i) A new facilities inspection will be required when a permittee changes address or increases the number of raptors in their possession.

(h) The Utah Falconry Program Coordinator must be notified within five (5) business days of a change in the location of an individual's falconry facilities.

(i) Facilities requirements for non-resident falconers wishing to establish residency in Utah

(A) A raptor may be housed in a temporary facility for no more than six months, provided the temporary facility has been inspected and has a suitable perch for the raptor and adequately protects it from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(4) The Mews.

(a) The mews must have a suitable perch for each raptor, at least one opening for sunlight, and must provide for a healthy environment for each raptor inside.

(b) A mews must be large enough to allow easy access for the care and feeding of raptors kept inside.

(c) Untethered raptors may be housed together in the mews if they are compatible with each other.

(i) If untethered raptors housed in an indoor mews that is not a place of residence, then the mews must be fully enclosed;

(ii) Walls and ceiling of the mews may be solid, or barred, or covered with heavy duty netting;

(iii) If bars, or heavy duty netting, or mesh are used, openings must be narrower than the width of the body of the smallest raptor housed in the mews.

(d) Each mews must be large enough to allow each raptor the opportunity to fly if it is untethered or, if tethered, to fully extend its wings or bate without damaging its feathers.

(e) Each raptor shall have a pan of clean water available to it at all times while in a mews, unless weather conditions, perch type used, or some other factor makes it inadvisable to have water available next to the raptor.

(f) Acceptable indoor facilities may include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and opportunity to maintain undamaged feathers.

(g) A place of residence used for housing falconry raptors indoors is considered a mews provided each raptor is tethered to a suitable perch.

(i) A raptor may be untethered inside a place of residence when being handled.

(ii) If a raptor is housed inside a place of residence, there is no need to modify windows or other openings in the residence.

(iii) A raptor may be housed untethered inside a flight chamber constructed within a place of residence with the following provisions:

(A) the flight chamber must have a source of light;

(B) The flight chamber must be fully enclosed;

(C) Walls and ceiling of the flight chamber may be solid, or barred, or covered with heavy duty netting;

(D) If bars, or heavy duty netting, or mesh are used, openings must be narrower than the width of the body of the smallest raptor housed in the flight chamber.

(5) Weathering Area

(a) The weathering area must be totally enclosed, and can be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material capable of preventing the raptor's escape and excluding predators and other animals capable of causing harm to the raptor.

(b) The weathering area must be covered and have at least one covered perch to protect a raptor from predators and weather.

(c) Adequate perches must be provided within the weathering area to ensure the health, safety and protection of the raptor.

(d) Raptors must be tethered while inside the weathering area.

(e) The weathering area must be large enough to insure that the raptor(s) cannot strike the enclosure when bating from the perch.

(f) Raptors may be perched next to a solid or fully opaque wall in the weathering area provided the proximity of the wall to the perch will not cause injury to the raptor or feather damage.

(g) Each raptor should have a pan of clean water available.

(i) At the discretion of the permittee, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.

(h) New types of housing facilities and/or husbandry practices may be used if they satisfy the requirements of this chapter and are approved by the Division.

(i) Falconry raptors may be kept outside in the open at any location if they are under watch by an individual familiar with the handling of raptors.

(j) Approved falconry facilities may be on property owned by another person, provided the falconer submits a signed and dated statement by the falconer and the property owner agreeing that the falconry facilities, equipment, and raptors may be inspected without advance notice by the Division at any reasonable time of day.

(k) Raptors in transit must be provided with an adequate perch and protected from extreme temperatures, wind, and excessive disturbance to ensure the health, safety and protection of any raptor being transported.

R657-20-7. Temporary Care of Falconry Raptors.

(1) Short-term handling of a raptor by a person other than the permitted falconer, such as allowing a person to handle or practice flying a permittee's raptor is not considered temporary possession for the purposes of this rule, provided the permittee is present and supervising the individual that is handling the raptor.

(2) Temporary care of raptors by another falconry permittee

(a) Another falconry permittee may care for a falconer's raptors for up to 120 consecutive calendar days.

(b) The temporary care permittee must have a signed and dated statement from the falconer authorizing the temporary possession, in addition to a copy of the FWS Form 3-186A for that raptor.

(i) The signed and dated statement must identify the time period for which the temporary permittee will keep the raptors and what activities are allowed to be carried out with the raptors.

(ii) Falconry raptors in temporary care will remain on the original falconer's COR and will not be counted against the possession limit of the person providing the temporary care for the raptors.

(iii) If the permittee providing temporary care for the raptors holds the appropriate level falconry permit, then the temporary permittee may fly the raptors in whatever way authorized by the falconer, including hunting.

(iv) Temporary care of raptors may be extended by the Division in extenuating circumstances such as, illness, military duty, and family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(3) Temporary care of raptors by a non-falconer.

(a) A non-falconer may care for a falconer's raptors for up to 45 consecutive calendar days.

(i) The raptors will remain on the original falconer's COR.

(ii) The raptors must remain at the original falconer's facilities.

(iii) Temporary care of raptors by non-falconers may be extended by the Division in extenuating circumstances such as illness, military duty, or family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(iv) A non-falconers caring for a falconer's raptors may not fly them for any reason.

(4) Transfer of falconry raptors when a permittee dies.

(a) A surviving spouse, executor, administrator, or other legal representative of a deceased falconry permittee may

transfer any raptor(s) held by the deceased permittee to another authorized permittee within 90 calendar days of the death of the original falconry permittee.

(b) After 45 calendar days from the death of the falconry permittee, disposition of raptors held under the permit is at the discretion of the Division.

R657-20-8. Equipment.

(1) Prior to the facilities inspection and issuance of a falconry COR, the applicant shall possess the following items for each raptor in possession or for each raptor proposed for future capture:

(a) At least one pair of Aylmeri jesses, or similar type, made from pliable, high quality leather or suitable synthetic material;

(b) The materials and equipment necessary to make Aylmeri jesses or other material to be used when any raptor is flown free.

(i) Traditional one-piece jesses may be used on raptors when not being flown.

(c) At least one flexible, weather-resistant leash.

(d) At least one swivel of acceptable falconry design.

(e) At least one suitable container, two to six inches deep and wider than the length of the raptor, to hold drinking and bathing water for each raptor.

(f) At least one perch of an acceptable design will be provided for use for each raptor.

(g) A reliable scale or balance suitable for weighing the raptor held and graduated to increments of not more than one-half ounce or less.

(h) For small raptors, such as kestrels, merlins, and sharp-shinned hawks, the scale must weight in increments of at least 1 gram.

R657-20-9. Apprentice Class Falconer.

(1) Apprentice class falconer requirements

(a) Applicants for an Apprentice Class falconry COR must be at least 12 years of age;

(i) Applicants for an Apprentice Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor Apprentice Class falconer are legally responsible for the activities of their child.

(b) Applicants for an Apprentice Class falconry COR must correctly answer at least 80 percent of the questions on an examination administered by a Division representative.

(i) An individual may not take the falconry exam earlier than two months prior to their 12th birthday.

(ii) The examination questions will cover basic care and handling of falconry raptors, state and Federal laws and regulations relevant to falconry, raptor biology, diseases and health issues, raptor identification, trapping and training methods, and other appropriate subject matter.

(iii) An individual may contact any Division office for information about taking the examination.

(iv) Falconry examinations are administered at any Division office by appointment only during business hours.

(v) An individual that fails to correctly answer at least 80 percent of the questions on the exam may retake the exam after a minimum 14-day period.

(c) An applicant's facilities and equipment must pass inspection by the Division under R657-20-6 before a falconry COR can be issued.

(2) Possession of Raptors at the Apprentice Class

(a) An Apprentice Class falconer may take or possess for falconry

(i) Any wild-caught passage age raptor or captive-bred, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes with the following exceptions:

(3) The hybrid raptor cannot be the result of a cross involving any species listed in Section 10.13 of 50 CFR 21 (Federal Migratory Bird Treaty Act)

(i) An Apprentice Class falconer may not take or possess wild caught, captive-bred, or hybrid eagles;

(ii) An Apprentice Class falconer may not take or possess federally listed threatened or endangered species;

(iii) An Apprentice Class falconer may not take or possess any wild-caught species listed as a national Species of Conservation Concern by the Service;

(b) An Apprentice Class falconer may possess no more than one (1) wild-caught passage age raptor or captive-bred raptor for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the Apprentice has been issued.

(c) Another falconry permittee may capture a wild raptor and transfer the raptor to an Apprentice Class falconer as provided in R657-20-15.

(d) An Apprentice Class falconer may not take or possess a raptor taken from the wild as an eyas.

(e) An Apprentice Class falconer may not possess an imprint raptor.

R657-20-10. Apprentice Class Sponsor.

(1) Applicants for an Apprentice Class falconry COR must have a sponsor to mentor and assist the Apprentice Class falconer, as necessary, in:

(a) Husbandry and training of raptors held for falconry;

(b) Relevant wildlife laws and regulations, and

(c) Determining what species of raptor is appropriate for the Apprentice to possess.

(2) The person applying for an Apprentice Class falconry COR must provide the Division with a letter from their chosen sponsor stating that sponsor's willingness to serve as a sponsor for the Apprentice Class falconer.

(3) Requirements of an Apprentice Class Sponsor

(a) Any person sponsoring an apprentice under the age of 18, other than the minor's parent or legal guardian, must be approved in writing by the minor's parent or legal guardian and submitted to the Division before being designated as the minor's sponsor;

(b) A sponsor must be a Master Class Falconer who holds a valid Utah Falconry COR, or

(i) Be a General Class Falconer who is at least 18 years of age, has no less than 2 years experience at the General Class falconer level, and who holds a valid Utah falconry COR.

(4) Unless approved by the Division in writing, the sponsor cannot reside

(a) Greater than a 100 mile distance from the Apprentice; or

(b) Outside of Utah.

(5) Apprentice Class falconers that change or terminate sponsors must notify the Division in writing and provide a letter from the new sponsor showing compliance with the requirements listed in R657-20-10(3).

(a) In the event sponsorship is terminated, the holder of an Apprentice Class falconry COR must obtain a new sponsor within 30 calendar days of termination.

R657-20-11. General Class Falconer.

(1) General Class falconer requirements

(a) Applicants for a General Class falconry COR must be at least 16 years of age;

(i) Applicants for a General Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor General Class falconer are legally responsible for the activities of their child.

(b) New General Class applicants must submit a request for class upgrade to the Division in writing or via email, and include a document from their General Class or Master Class sponsor stating that the General Class applicant has practiced falconry at the Apprentice Class Falconer level or equivalent for at least 2 years including maintaining, training, flying, and hunting raptors for at least 4 months in each separate 12-consecutive month period.

(i) For purposes of this Subsection, 2 years means two separate 12-consecutive month periods.

(ii) A General Class applicant may not substitute any falconry school program or education to shorten the minimum period of 2 years at the Apprentice level.

(iii) Evidence that a General Class applicant has had a valid General Class level falconry license or permit in another state for at least 2 years may be substituted for the Apprentice Class falconry COR requirement.

(2) Possession of raptors at the General Class

(a) A General Class falconer may take or possess any eyas or passage age wild-caught raptor,

(b) A General Class falconer may possess captive-bred, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes with the following exceptions:

(i) A General Class falconer may not take or possess eagles;

(ii) A General Class falconer may take or possess or any wild-caught species listed as a national Species of Conservation Concern by the Service.

(c) A General Class falconer may possess no more than 3 wild-caught eyas or passage age raptors, captive-bred raptors, or hybrid raptors, or any combination thereof, for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the General Class falconer has been issued.

R657-20-12. Master Class Falconer.

(1) Master Class falconer requirements

(a) Applicants for a Master Class falconry COR must have 5 years of experience practicing falconry with raptor(s) held under their own state, tribal, or territorial falconry COR or permits at the General Class Falconer level.

(i) For the purposes of this Subsection, "5 years of experience" means maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each of five (5) separate 12-month periods.

(ii) Evidence that the applicant has had a valid General Class level falconry license or permit in another state for at least 5 years may be substituted for the General Class falconry COR requirement.

(iii) If an applicant has held falconry raptor(s) on an extended temporary basis, that experience may qualify for purposes of these requirements.

(2) Possession of Raptors at the Master Class

(a) A Master Class falconer may take or possess any wild-caught eyas or passage age, captive-bred raptor, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes with the following exceptions:

(i) A Master Class falconer may not take or possess a bald eagle (Haliaeetus leucocephalus)

(ii) A Master Class falconer may take or possess any wild-caught species listed as a national Species of Conservation Concern by the U. S. Fish and Wildlife Service

(b) A Master Class falconer may take and possess a golden eagle only if the qualifications set forth parting Subsection (2)(d) below are met.

(c) A Master Class falconer may possess no more than 5 wild-caught eyas or passage age raptors for use in falconry, including golden eagles, regardless of the number of state, tribal, or territorial falconry CORs or permits that the Master Class falconer has been issued.

(i) A Master Class falconer may possess any number of captive-bred raptors, provided

(A) Approved facilities are available

(B) The captive-bred raptors must be trained in the pursuit of wild game and used for hunting.

(d) A Master Class falconer must obtain an authorization from the Division to possess an eagle for use in falconry pursuant to R657-20-13;

(i) Approval for a Master Class falconer to take or possess an eagle for use in falconry shall not be granted unless the following documentation is provided:

(A) A written statement documenting the experience of the Master Class falconer in handling large raptors, including information about the species handled and the type and duration of activities in which the experience was obtained.

(B) At least two letters of reference from individuals with experience in handling or flying large raptors such as eagles, ferruginous hawks (Buteo regalis), Northern goshawks, or great horned owls (Bubo virginianus).

(I) Each reference letter must contain a concise history of the author's experience with large raptors, which can include but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors.

(II) Each reference letter must also assess the Master Class Falconer's ability to care for eagles and fly them in falconry.

R657-20-13. Acquiring Raptors for Falconry.

(1) Licensed falconers wishing to take raptors from the wild for falconry must purchase a Raptor Capture Permit from the Division.

(a) A Raptor Capture Permit is valid for one wild raptor authorized for possession in accordance with the restrictions and limitations of this rule.

(b) Raptor Capture Permits are non-transferable and non-assignable and can only be used by the person specified on the permit. However, another person can assist the permit holder pursuant to Section R657-20-15.

(c) The Raptor Capture Permit and falconry COR (or legible copies thereof) must be in the possession of the permittee while pursuing, capturing or attempting to capture a wild raptor.

(2) On an annual basis, the falconry Program Coordinator shall determine the available take of peregrine falconers and raptors listed on the most recent edition of the Utah sensitive species list.

(a) Notice of any limitations on the take of sensitive raptors shall be available by February 1 of each year.

(b) If the number of applications received exceeds the available take, then the Division will conduct a drawing.

(c) An individual may only draw once every 2 years to take peregrine falcons, sensitive raptor species, and nonresident legal raptors.

(i) If the number of applications received is less than the available take, then the 2 year restriction is waived, and the remaining take will be made available to resident and nonresident falconers of the appropriate class on a first-come first-served basis.

(3) A licensed falconer may not take more than 2 raptors from the wild each calendar year for falconry purposes.

(a) Haggard age raptors may not be taken from the wild for falconry.

(b) Any raptor taken from the wild for falconry is considered a "wild" raptor for the balance of the raptor's life, regardless of the length of captivity or the raptor's transfer to another permittee or permit type.

(c) A licensed falconer who wishes to take a raptor from the wild must meet all state and tribal requirements in this rule for capture of wild raptors for falconry.

(d) A permittee may not purchase, sell, trade, or barter a wild raptor.

(4) Resident Take of Wild Raptors

(a) While trapping, falconers shall not retain and transport more than one captured wild raptor per capture permit.

(5) Taking of wild raptors is prohibited within the boundaries of all National and State Parks in Utah

(6) A raptor may be taken from the wild by traps or nets that minimize the potential of physical injury and unnecessary stress to the raptor.

(a) Examples of acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, bow net traps, or other trapping devices that are humane and acceptable as commonly used in falconry trapping procedures.

(b) Trapping devices must be constantly attended while in use.

(7) A raptor taken from the wild may be transferred to another permittee under the following conditions:

(a) The captured raptor will count as one of the raptors allowed for take from the wild in the calendar year it was taken by the capturing falconer;

(b) The transferred wild raptor will not count as a capture by the recipient.

(8) A permittee may not intentionally capture wild raptor species for falconry that their classification as a falconer does not allow them to possess.

(a) If a permittee captures a wild raptor he or she is not allowed to possess, it must be released immediately.

(9) A General or Master Class falconer may take no more than 1 raptor from the wild each year which belongs to a species listed as threatened or endangered under the federal Endangered Species Act if allowed under 50C CFR part 17, and if a federal endangered species permit is obtained before taking the bird.

(10) A General or Master Class falconer may take eyas raptors from a nest or aerie only during the seasons specified for taking eyas raptors in Subsection (12).

(a) At least one young must be left in any nest or aerie from which an eyas is taken.

(b) Removal of young is prohibited from a nest or aerie that contains only one eyas.

(c) An eyas may not be removed from its aerie prior to 10 days of age.

(d) Aeries may not be entered when young are 28 days or more of age.

(11) An Apprentice, General or Master Class falconer may take passage age raptors from the wild only during the seasons specified for taking passage age raptors in Subsection (12).

(12) Periods for Allowable Take Of Raptors From the Wild.

(a) Eyas or passage age raptors of any allowable Strigiform species may be taken from March 1 through November 30.

(b) Eyas or passage age raptors of any allowable Accipitriform and Falconiform species except peregrine falcon (Falco peregrinus) and golden eagle (Aquila chrysaetos) may be taken January 1 through December 31.

(i) The peregrine falcon take season begins annually on May 1st and ends on August 31st.

(ii) Notwithstanding Subsection (12)(b):

(A) Passage age raptors that fledged from the prior year may not be taken after March 1st; and

(B) Passage age gyrfalcons (Falco rusticolus) may be taken at any time.

(c) Licensed falconers may take any raptor from the wild that is authorized under this rule for take for their class level.

(i) A wild caught raptor that is banded with a Federal Bird Banding Laboratory aluminum band may be taken, provided the Federal Bird Banding Laboratory is notified of the removal of the banded raptor from the wild;.

(ii) The Federal Bird Banding Laboratory aluminum band may be removed if the raptor is to be retained, after notifying the Federal Bird Banding Laboratory.

(iii) Capture of any raptor that is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird must be reported to the Division no more than 5 business days after the capture.

(iv) Capture of any raptor that is marked with any other band, research marking, or attached research transmitter attached to it must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263.

(13) Nonresident Take of Wild Raptors

(a) A nonresident falconer may not take any raptor from the wild without first obtaining a Nonresident Raptor Capture Permit from the Division.

(b) Nonresidents must show proof of a valid federal falconry permit or falconry license issued by their state of residency to purchase a Nonresident Raptor Capture Permit.

(c) Nonresident take of raptors is subject to all other applicable regulations set forth in this rule.

(14) Special provisions for take of wild peregrine falcons.

(a) Only General and Master Class falconers only may take wild eyas or passage age peregrine falcons as provided in this rule.

(b) The areas open for taking eyas and passage age peregrine falcons will be designated annually by the Falconry Program Coordinator.

(c) A peregrine falcon that is marked with a with a Federal Bird Banding Laboratory aluminum band and/or a

research band such as a colored band with alphanumeric codes or some other research marking attached must be immediately released.

(i) Research band numbers and location and date of capture must be reported to the Division and the Federal Bird Banding Laboratory (1-800-327-2263) within 5 business days of the date of capture.

(15) Special provisions for take of wild golden eagles

(a) A Master Class falconer with a COR to take golden eagles may take no more than three from the wild, subject to the requirements in federal statute 50 CFR 21 and Section R657-20-12(2)(c).

(i) A Master Class Falconer that is authorized to take golden eagles may take no more than two golden eagles from the wild in any calendar year and only in a livestock depredation area during the time the depredation area declaration is in effect.

(A) The establishment, boundaries, and duration of a livestock depredation area in Utah are declared by U.S.D.A. Wildlife Services and the U. S. Fish and Wildlife Service in Lakewood, CO.

(ii) A Master Class falconer authorized to take golden eagles for use in falconry may capture an immature or subadult golden eagle only in a livestock depredation area during the time the depredation area is in effect in Utah.

(A) A Master Class Falconer may capture a nesting adult golden eagle, or take an eyas from its nest, in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the parent adult eagle is preying on livestock.

(B) A government employee who has trapped a golden eagle under Federal, State, or tribal permit may transfer the eagle to a Master Class falconer that is authorized to possess golden eagles if the eagle cannot be released in an appropriate location.

(iii) A Master Class Falconer authorized to take a golden eagle for falconry must contact USDA, Wildlife Services or the U. S. Fish and Wildlife Service in Lakewood, CO to determine the establishment and location of a livestock depredation area in Utah

(A) The Division does not provide livestock depredation area information.

(B) The Master Class falconer must have permission from the private landowner to capture a golden eagle on private lands.

(16) Other special provisions for obtaining raptors for falconry

(a) A permittee may receive assistance from another individual in capturing a wild raptor, but the permittee must be present at the capture site

(b) Regardless of the assistance of another person in capturing a wild raptor:

(i) The permittee is always considered to be the individual who removes the bird from the wild; and

(ii) the permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(c) A permittee with a long-term or permanent physical impairment that prevents their attendance at the capture of a raptor for use in falconry, or is otherwise unable to be present at the immediate location where the raptor is taken from the wild, may contact a General or Master Class falconer only to capture a raptor on their behalf.

(i) The impaired permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(ii) The raptor will count against the take of wild raptors that the impaired permittee is allowed in any year.

(iii) The raptor will not count as one of the two replacement raptors the General or Master Class falconer who offers assistance is allowed to capture in any year.

(iv) The raptor will not count as being taken from the wild by the permittee acting on behalf of the impaired permittee.

(d) Individuals authorized to do so may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands to other permittees who are legally authorized to possess the raptor.

(e) A permittee may transfer a raptor to another permittee who is legally authorized to possess the raptor, provided there is no pecuniary consideration for the transfer.

(i) The number of wild caught or captive-bred raptors transferred to a permittee may not exceed the established possession limit for each permit class.

(f) A licensed falconer may acquire directly from a rehabilitator a raptor of any age or species that the falconer is permitted to possess.

(i) A wild raptor acquired for falconry from a rehabilitator will count as one of the raptors the falconer is allowed to take from the wild that calendar year.

R657-20-14. Raptors Injured Due to Falconer Trapping Efforts.

(1) Falconers that injure a raptor during trapping efforts are responsible for the costs of care and rehabilitation of the injured raptor.

(a) An injured raptor retained by the permittee must be placed on the permittee's falconry permit.

(b) The injured raptor must be treated by a veterinarian or a permitted wildlife rehabilitator.

(c) The injured raptor must be immediately transported to a veterinarian, a permitted wildlife rehabilitator, or an appropriate wildlife agency employee.

(d) The injured raptor will not count against the permittee's allowed take or the permittee's possession limit.

R657-20-15. Recapture of Falconry Raptors.

(1) A falconry raptor that has been lost may be recaptured at any time without the need to purchase a Raptor Capture Permit.

(2) Recapture of a lost or escaped "wild" raptor is not considered to be the taking of a raptor from the wild.

(3) A raptor wearing falconry equipment or a lost or escaped captive-bred raptor may be recaptured at any time by any other permitted falconer - even if the permittee performing the recapture is not allowed to possess the species.

(4) A recaptured raptor will not count against a permitted falconer's possession limit, nor will its recapture from the wild count against the permitted falconer's replacement limit.

(a) A recaptured falconry raptor must be returned to the permittee who lost it if that individual may legally take possession.

(i) Disposition of a recaptured falconry raptor where the permittee's legal authority to possess the bird is in question will be determined by the Division.

(ii) A recaptured falconry raptor temporarily held for return to the permittee who lost it will not count against the possession or replacement limit on take of raptors from the wild if the individual temporarily holding the raptor has reported the recapture to the Division.

R657-20-16. Flying a Hybrid Raptor in Falconry.

(1) When flown free, a hybrid raptor must have at least two attached radio transmitters for tracking.

R657-20-17. Hacking of Falconry Raptors and other Training Techniques.

(1) A General or Master Class Falconer only may hack a falconry raptor or raptors.

(2) Raptors at hack count against possession limits and must be a species authorized for possession.

(3) Hybrid raptors at hack must have two attached and functioning radio transmitters.

(4) Raptors are not to be released at hack near the nesting area of a federally threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered animal species that might be disturbed or taken by the raptor at hack.

(a) The Division must be notified prior to hacking a falconry raptor.

(b) Information on federally-listed species can be obtained from the Service.

(5) Use of other falconry training or conditioning techniques.

(a) Other acceptable falconry practices may be used, such as the use of tethered flying, lures, balloons, or kites in training or conditioning raptors for falconry.

(b) Falconry raptors may be flown at pen-raised animals or at bird species not protected under this rule or the Migratory Bird Treaty Act.

R657-20-18. Permission to Conduct Falconry Activities on Public or Private lands.

(1) A falconer must comply with all applicable Federal, State, local, or tribal laws regarding falconry activities, including hunting, on private, public, and tribal lands.

(a) All falconry activities shall be conducted consistent with the trespass requirements in Section 23-20-14.

(b) A person may not engage in any falconry activity on Tribal trust lands without authorization.

(2) Raptor training is not allowed on state waterfowl and wildlife management areas without authorization.

(3) Practicing the sport of falconry without permission is prohibited on all National Parks in Utah

(4) Practicing the sport of falconry without permission is prohibited on all Utah state Parks.

R657-20-19. Practicing Falconry in the Vicinity of a Federally Listed Threatened or Endangered Animal Species.

(1) Individuals practicing falconry must ensure that such activities do not result in the take of federally listed threatened or endangered wildlife.

(2) Under the federal Endangered Species Act:

(a) "Take" means "to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct".

(b) "Harass" means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering; and

(c) "Harm" means an act that actually kills or injures wildlife

(3) Information about threatened or endangered species that may occur in Utah is available by contacting the Service or the Division.

R657-20-20. Releasing a Falconry Raptor to the Wild.

(1) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may not be permanently released into the wild.

(a) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may be transferred to another falconry permittee authorized for possession.

(2) A raptor that is native to the State of Utah and captive-bred may not be permanently released into the wild without prior authorization from the Division.

(a) Once authorization for release of a captive-bred native raptor is received, the raptor must be hacked (allow it to adjust) to the wild at an appropriate time of year and at an appropriate location as determined by the falconer.

(b) The falconry or captive-bred band must be removed and release of the bird reported to the Division in accordance with Section R657-20-21.

(3) If the species to be released is native to the State of Utah and was taken from the wild, the raptor may be released only at an appropriate time of year and at an appropriate location as determined by the falconer.

(a) If the raptor is banded, the band must be removed and release of the bird reported to the Division in accordance with Section R657-20-21.

R657-20-21. Reporting Requirements.

(1) All activities, including wild take, acquisition, transfer, exchange, band/reband or microchip implant, loss (if not recovered within 30 days), recapture, injuries, and theft of any falconry raptor must be reported to the Division within 10 business days of the date of the event, as follows:

(a) Submit to the Division a completed paper Form 3-186a by mail or email; and

(b) Enter the required information in the electronic database located at http://permits.fws.gov/186A

(2) A permittee must retain copies of all electronic database submissions documenting take, transfer, loss, rebanding or micro chipping or any other transaction for each falconry raptor for up to 5 years after the given transaction or event has taken place.

(3) Date of capture, sex of the raptor, and location of the capture must be recorded on the Raptor Capture Permit for all species.

(a) Nest locations are held for use by the Division's sensitive species biologists and will not be made available to the public.

(4) All Resident falconers holding a valid falconry COR must submit a completed falconry Annual Report to the Division by January 31 of each year, as follows:

(a) By December 31 of each year, the Division will provide each resident falconer with an annual report form.

(b) Each resident falconer must complete the annual report and return the report to the Division by the following January 31.

R657-20-22. Unintentional Take of Protected Wildlife by a Falconry Raptor.

(1) A falconry raptor may be allowed to feed on a prey animal taken unintentionally, provided the prey animal is not taken into the falconer's possession.

(2) Unintentional take of any federally listed threatened or endangered species must be reported to the Division and the U. S. Fish and Wildlife Ecological Services Field Office in Salt Lake City within 48 hours of the take event.

(3) Unintentional take of any Utah protected wildlife must be reported to the Division within 48 hours of the take event.

R657-20-23. Banding or Tagging Raptors Used in Falconry.

(1) A falconer who has captured or acquired a wild northern goshawk, wild Harris's hawk (Parabuteo unicinctus), wild peregrine falcon, or wild gyrfalcon must band the raptor with a permanent, nonreusable, black-colored numbered Service leg band.

(a) A falconer must contact the Division for information on obtaining and disposing of bands.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(2) Raptors bred in captivity must be banded with a Service seamless metal band described in 50 CFR 21 Section 21.30, or plastic, numbered Service yellow band.

(a) Unbanded raptors, or black, or yellow banded raptors may not be sold, traded or bartered in any way.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(c) Removal or loss of a seamless band must be reported to the Division within 10 business days of the event and a replacement non-reusable band attached to the raptor.

(d) New and replacement band or microchip information must be reported to the Division pursuant to Section R657-20-24.

(3) In the event a non-reusable band is removed or lost from a banded raptor, the removal or loss of the band must be reported to the Division pursuant to Section R657-20-21 and a replacement band requested.

(a) Immediately upon rebanding the raptor, the required information must be submitted to the Division pursuant to Section R657-20-21

(4) A band may not be altered, defaced, or counterfeited.

(5) Exemptions for banding of raptors will be considered on a case-by-case basis, as follows:

(a) Documented health or injury problems for a raptor that are caused by the band

(b) A copy of the exemption paperwork must be kept by the permittee when transporting or flying the raptor.

(c) If the raptor is a wild northern goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon, the band must be replaced with an ISO-compliant microchip.

(i) Substituting a microchip for a band on a wild goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon will not be authorized unless it has been demonstrated that a band causes an injury or a health problem for the raptor.

R657-20-24. Importation Requirements for Residents and Nonresidents.

(1) A person is not required to obtain a special COR from the Division to import a raptor brought into Utah from another state when the raptor is imported and used for falconry purposes.

(a) Importation of a raptor used for any purposes other than falconry is governed by Rule R657-3.

(b) A raptor imported into Utah is required to have:

(i) A certificate of veterinary inspection from the state, tribe, or territory of origin; and

(ii) An entry permit number issued through the Utah Department of Agriculture, Animal Health Office pursuant to R58-1-4.

(2) Any raptor brought into the state on a permanent basis must be reported to the Division pursuant to Section R657-20-24

R657-20-25. Falconry Meets or Trials.

(1) Falconers participating in falconry meets or trials must possess a valid falconry license and federal falconry permit, if applicable.

(2) A falconry meet license is not required for participation in a falconry trial.

(3) A falconry meet or trial may not be held on state waterfowl and wildlife management areas from April 1 through August 15, except in those areas approved by the Division.

(4) An organizer of a falconry meet must obtain prior approval from the Wildlife Board for non-residents to purchase a 5-day non-resident meet license.

(5) A nonresident entering Utah to participate in the sport of falconry at an organized meet must be 12 years of age or older and must obtain a nonresident falconry meet license if hunting protected wildlife.

(6) A falconry meet license may be obtained by completing an application and submitting the application and appropriate fees to the Division.

(7) A falconry meet license is valid only for nonresidents and only for five (5) consecutive calendar days as designated on the license.

(8) The holder of a nonresident falconry meet license may engage in the sport of falconry on protected wildlife during the specified five-day period in accordance with the applicable proclamations of the Wildlife Board.

(9) A nonresident participating in an organized meet must provide a health certificate and an entry permit number obtained from the Utah Department of Agriculture, Animal Health Section, on each raptor brought into the state.

R657-20-26. Use of Pen-Reared Game Birds for Meets, Trials and Training.

(1) Any falconer using pen-reared game birds for meets, trials or training must have an invoice or bill of sale or a copy thereof in their possession showing lawful personal possession or ownership of such birds.

(2) Pen-reared game birds may be held in possession no longer than 60 calendar days unless the person possessing the pen-reared game birds first obtains a private aviculture COR as provided in Rule R657-4.

(3) Each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released except as provided in Subsection (c).

(a) Aluminum leg bands may be purchased at any Division office.

(b) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(c) Each pen-reared game bird used on a commercial hunting area may be released without marking.

(4) Pen-reared game birds used for a meet may be released only on the property specified and only during the dates approved for the falconry meet.

(5) Released pen-reared game birds may be taken using falconry raptors, as follows:

(a) By the individual who released the pen-reared game birds, or by any individual participating in the meet; and

(b) Only during the approved dates of the meet.

(6) Once released, any pen-reared game birds that leave the property where the meet is held or are not retrieved at the conclusion of the meet become the property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(7) Pen-reared game birds used for training raptors, or for a trial that escape or are not recovered on the day of the training, or pen-reared game birds that escape, become property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game and Waterfowl proclamations of the Wildlife Board and elsewhere in this rule.

R657-20-27. Use of Feathers and Carcasses.

(1) Feathers that a falconry bird or birds molt may be used for imping.

(a) Flight feathers for each species of raptor currently in possession or previously held may be kept for imping for as long as needed by a falconer with a valid falconry COR.

(i) Feathers for imping purposes may be received from or provided to other licensed falconers, wildlife rehabilitators, or propagators in the United states.

(ii) Licensed falconers may not buy, sell, or barter molted raptor feathers.

(b) Molted feathers from a falconry bird, except golden eagle feathers, may be donated to any person or institution with a valid permit for possession.

(c) Except for primary or secondary wing feathers or rectrix (tail) feathers from a golden eagle, a falconer is not required to gather feathers that are molted or otherwise lost by a falconry bird held under a valid COR.

(i) Molted feathers may be left where they fall, stored for imping, or destroyed.

(ii) A licensed falconer possessing a golden eagle must collect any molted flight feathers and rectrices.

(iii) Collected golden eagle feathers that are not to be retained for imping must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(d) Once a falconry COR expires and is not renewed or is revoked, the falconer must donate molted feathers of any species of falconry raptor to any person or institution authorized by permit to acquire and possess the feathers.

(i) Molted feathers that are not donated must be burned, buried, or otherwise destroyed.

(2) Disposition of carcasses of falconry birds that die.

(a) The entire carcass of a golden eagle held for falconry that dies, including all feathers, talons, and other parts, must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(b) The body or feathers of any other species of falconry raptor may be donated to any person or institution authorized by permit to acquire and possess raptor parts or raptor feathers.

(c) A falconry raptor, except a golden eagle, that was either banded or micro chipped prior to its death may be retained by the licensed falconer.

(i) The body of the raptor may be kept so that the feathers are available for imping, or the body may be mounted by a taxidermist.

(A) The mounted raptor may be used in conservation education programs.

(B) If the falconry raptor was banded, the band must be left in place on the mounted raptor body.

(C) If the falconry raptor has an implanted microchip, the microchip must be left in place on the mounted raptor body.

(d) The body and feathers of a deceased falconry raptor that are not donated or retained must be burned, buried, or otherwise destroyed within 10 calendar days of the death of the

bird or after final examination by a veterinarian to determine cause of death.

(e) A licensed falconer that does not wish to donate or destroy the flight feathers of a deceased raptor or have the body mounted by a taxidermist, may possess the flight feathers for as long as they possess a valid falconry COR, provided:

(i) The feathers are not be bought, sold, or bartered; and

(ii) The paperwork documenting lawful possession of the deceased raptor is retained.

R657-20-28. Other Uses of Raptors.

(1) Transfer of wild raptors captured for falconry to other permitted uses.

(a) A wild-caught falconry raptor may be transferred to a person authorized to possess raptors for propagation purposes only after the raptor has been used in falconry for at least:

(i) 12 months from the date of capture for a sharp-shinned hawk, Cooper's hawk, merlin, or American kestrel; and

(ii) 24 months from the date of capture for all other falconry raptors.

(b) The time periods imposed in Subsection (1)(a) for transferring a wild-caught falconry raptor to a person authorized to possess raptors for propagation purposes may be waived by the Division if the raptor has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the raptor can no longer be flown for falconry.

(i) In order to permanently transfer an injured raptor to a propagation permit, the falconer must provide the Division and the Federal migratory bird permits office that administers propagation permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(c) Upon transfer of a wild raptor to a propagation permit, the falconer must provide a copy of the 3-186A form documenting acquisition of the raptor by the propagator to the Division and the Federal migratory bird permit office that administers propagation permits.

(2) Transfer of captive-bred falconry raptors to other permitted uses.

(a) Captive-bred falconry raptors may be transferred to another person if the recipient is authorized for possession.

(3) Use of raptors possessed for falconry in captive propagation

(a) Raptors possessed for falconry may be bred in captivity if the falconer or the person overseeing the propagation has the necessary permits.

(b) Formal transfer of a raptor from a falconry permit to a captive propagation permit is required if the raptor is to be permanently used for propagation.

(c) Formal transfer of a raptor from a falconry permit to a captive propagation permit is not required if the raptor is used for propagation less than 8 months in a year.

(i) The licensed propagator must have a signed and dated statement from the falconer authorizing the temporary possession, plus a copy of the falconer's original FWS Form 3-186A for that raptor.

(4) Use of falconry raptors in conservation education programs.

(a) A General or Master Class falconer may use a falconry raptor in conservation education programs presented in public venues.

(i) A Federal education permit is not required to conduct conservation education activities using a falconry raptor held under a Utah falconry COR.

(ii) In order to permanently transfer an injured raptor to an education permit, the falconer must provide the Division and the Federal migratory bird permits office that administers education permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(b) Conservation programs may be presented by an Apprentice Falconer who is accompanied by their General or Master Class sponsor.

(c) Raptors used to present conservation programs must primarily be used for falconry.

(d) A falconer may charge a fee for presentation of a conservation education program.

(i) The fee charged may not exceed the amount required to recoup costs of presenting the conservation education program.

(e) When presenting conservation education programs, the falconer must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation.

(f) A falconer may not give presentations using a falconry raptor that do not address falconry and conservation education.

(g) The falconer is responsible for all liability associated with conservation education activities undertaken.

(5) Other educational uses of falconry raptors.

(a) A falconer may allow photography, filming, or other similar uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(i) A falconer may not be paid or otherwise compensated for such activities.

(b) A falconer may not use falconry raptors or permit the use of falconry raptors to make movies, commercials, or in other commercial ventures that are not related to the practice of falconry or the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(c) Falconry raptors may not be used for:

(i) Commercial entertainment for advertisements;

(ii) promoting or endorsing any business, company, corporation, or other organization; or

(iii) promoting or endorsing any product, merchandise, good, service, meeting, or fair, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(6) Assisting in rehabilitation of raptors in preparation for release.

(a) A General or Master Class Falconer may assist a permitted migratory bird rehabilitator in conditioning raptors in preparation for their release to the wild.

(i) The falconer may keep the raptor being rehabilitated in their facilities up to 180 calendar days.

(ii) The rehabilitator must provide the falconer with a letter or form that identifies the raptor and explains that the falconer is assisting in the rehabilitation of the raptor to be released.

(iii) Facilities where the raptor will be temporarily housed must adhere to standards outlined in Sections R657-20-6 of this rule.

(iv) The falconer is not required to add any raptor possessed for rehabilitation to their COR; the raptor will remain under the permit of the rehabilitator.

(v) The falconer must permanently release any raptor capable of sustaining itself in the wild or return it to the rehabilitator within the 180-day timeframe in which the rehabilitator is authorized to possess the raptor, unless the Division authorizes the falconer to retain the bird for longer than 180 calendar days.

(7) Using a falconry raptors in abatement activities.

(a) Abatement activities may only be conducted with captive bred raptors.

(b) A Master Class falconer may conduct abatement activities with raptors possessed for falconry and receive compensation for such activities, if the falconer is in possession of a Special Purpose Abatement permit issued by the Service.

(c) A General Class falconer may conduct abatement activities only as a subpermittee of a Master Class falconer that possesses an abatement permit.

(d) An Apprentice Class falconer may not conduct abatement activities.

(8) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the Division as provided in Rule R657-3 and the appropriate authorization from the Service.

KEY: wildlife, birds, falconry
April 23, 2013 23-17-7
Notice of Continuation December 6, 2016 50 CFR 21

R698. Public Safety, Administration.
R698-1. Public Petitions for Declaratory Orders.
R698-1-1. Authority.

(1) 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.

(2) In order of importance, procedures governing declaratory orders are:

(a) procedures specified in this rule pursuant to Chapter 4 of Title 63G;

(b) the applicable procedures of Chapter 4 of Title 63G;

(c) applicable procedures of other governing state and federal law; and

(d) the Utah Rules of Civil Procedure.

R698-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-4-103, except and in addition:

(a) "agency" means the pertinent division, bureau or office within the Department of Public Safety;

(b) "declaratory order" means an administrative interpretation or explanation of rights, status and other legal relations under a statute, rule or order;

(c) "director" means the agency head or governing body with jurisdiction over the agency's adjudicative proceedings;

(d) "order" is defined in Section 63G-3-102; and

(e) "superior agency" means Commissioner of the Department of Public Safety.

R698-1-3. 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) 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 regular working 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.

R698-1-4. Reviewability.

(1) The agency shall not review a petition for declaratory orders that is:

(a) not within the jurisdiction or competence of the agency;

(b) trivial, irrelevant or immaterial; or

(c) otherwise excluded by state or federal law.

R698-1-5. Intervention.

A person may file a petition for intervention under Section 63G-4-207 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section R698-1-3.

R698-1-6. Petition Review and Disposition.

(1) 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 the petition adequate review and due consideration.

(2) The director may issue an order pursuant to Subsection 63G-4-503(6).

(3) If the director orders an adjudicative proceeding under Subsection 63G-4-503(6):

(a) the proceeding shall be formal and governed by the procedures of Title 63G, Chapter 4, Administrative Procedures Act, or other applicable law if a petition for intervention has been filed within the limits of Section R698-1-5; or

(b) the proceeding may be designated as formal or informal and follow the appropriate procedures of Title 63G, Chapter 4, Administrative Procedures Act,, agency rules or other applicable law if a petition for intervention has not been filed within the limits of Section R698-1-5.

R698-1-7. Administrative Review.

(1) A petitioner may seek review or reconsideration of a declaratory order by petitioning the director under the procedures of Title 63G, Chapter 4, Part 3, Agency Review, or as otherwise provided by law.

(2) If the presiding officer issuing the declaratory order is the director, the petitioner may seek the review of the superior agency.

(3) The petitioner may appeal a director's review or reconsideration decision to the superior agency unless otherwise provided by law.

(4) If the petitioner receives no response from the superior agency within 20 days of filing a petition for review or reconsideration, the appeal shall be considered denied.

KEY: administrative procedure, enforcement (administrative)
1993 63G-4-503
Notice of Continuation December 5, 2016

R698. Public Safety, Administration.
R698-2. Government Records Access and Management Act Rule.
R698-2-1. Purpose.

The purpose of the following rule is to provide procedures for access to government records of the Utah Department of Public Safety (Department).

R698-2-2. Authority.

This rule is authorized by Sections 63-2-204 of the Government Records Access and Management Act (GRAMA), and Section 63-46a-3 of the State Rulemaking Act.

R698-2-3. Allocation of Responsibility within Entity.

A. The Department and its agencies shall be considered a single government entity and the Commissioner of Public Safety or designee shall be considered the chief administrative officer of the Department and its agencies for purposes of Section 63-2-401.

B. For the purposes of Section 63-2-206, the Department shall be considered a single government entity. The agencies within the Department may share their records as necessary to perform their respective tasks provided that the recipient agency shall not further disclose any non-public record which it receives. Any decision concerning the disclosure of non-public records outside the Department shall be made only by the records officer or responsible authority in the agency which created the record, except when such decision has been appealed as provided in this rule.

C. The Department or its agencies may create general written agreements to govern the sharing of non-public records with law enforcement agencies outside the Department. Such an agreement shall include a list of the record series intended to be covered by the agreement, the classifications of each record series, and the certification by the recipient agency outside the Department that the recipient agency shall not make any further disclosure of the non-public record without the consent of the Department or the agency which created the record. When such an agreement is in place for the Department or any of its agencies, the Department or the agency which created the record may waive the requirement for a specific disclosure statement for each record requested, provided that the requested record is included in the list of record series in the agreement.

R698-2-4. Requests for Access.

Requests for access to government records of the Department of Public Safety (DPS) and its agencies should be made in writing. Such written requests shall be in accordance with the provisions of, or on department forms which are specified in R698-2-5.

A. For media organizations requests: DPS, Public Information Officer, 4501 South 2700 West, Salt Lake City, Utah 84119.

B. For all other requests, application should be made in writing to the agency from which the information is requested, as follows:

1. For records held by DPS, Administrative Services Division and all other records held by DPS agencies not specifically referenced below: Records Officer, Administrative Services Division, 4501 South 2700 West, Salt Lake City, Utah 84119.

2. For records held by the Division of Comprehensive Emergency Management: Records Officer, Comprehensive Emergency Management, 1110 State Office Building, Salt Lake City, Utah 84114.

3. For records held by the Driver License Division: Records Officer, Driver License Division, 4501 South 2700 West, Salt Lake City, Utah 84119.

4. For records held by the Law Enforcement and Technical Services Division select the appropriate bureau below:

a. Records Officer, Bureau of Criminal Identification, 4501 South 2700 West, Salt Lake City, Utah 84119.

b. Records Officer, DPS, Communications Bureau, 4501 South 2700 West, Salt Lake City, Utah 84119.

c. Records Officer, Regulatory/Security Licensing Bureau, 4501 South 2700 West, Salt Lake City, Utah 84119.

d. Records Officer, State Crime Lab, 4501 South 2700 West, Salt Lake City, Utah 84119.

5. For records held by DPS, Management Information Services Division: Records Officer, Management Information Services, 4501 South 2700 West, Salt Lake City, utah 84119.

6. For records held by Peace Officer Standards and Training: Records Officer, Peace Officer Standards and Training, 4525 South 2700 West, Salt Lake City, Utah 84119.

7. For records held by the State Fire Marshal: Records Officer, State Fire Marshal, 4501 South 2700 West, Salt Lake City, Utah 84119.

8. For records held by the Utah Division of Investigation: Records Officer, Division of Investigation, 5272 College Drive, Murray, Utah 84107.

9. For records held by the Utah Highway Patrol: Records Officer, Utah Highway Patrol, 4501 South 2700 West, Salt Lake City, Utah 84119.

R698-2-5. Forms.

A. 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.

1. Form DPS 2-204(1), "Request for Records", is for use by all persons requesting records from the Department. It is intended to assist persons who request records to comply with the requirements of Subsection 63-2-204(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.

2. Form DPS 2-206(2), "Certification by Requesting Governmental Entity", is for use by another governmental entity requesting controlled or private records from the Department, pursuant to Subsection 63-2-206(2). This form requires the information found in Form DPS 2-204(1), as well as certain representations required from the governmental entity, if the information sought is not public.

3. Form DPS 2-206(5), "Disclosure and Agreement", is for use when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63-2-206(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 by those restrictions.

B. The Department or its agencies may use forms to respond to requests for records.

R698-2-6. Fees.

A fee may be charged for copies of records provided. Amounts charged for photocopying will reflect costs as authorized by Chapter 38, Title 63, and Subsection 63-2-203(1). Fees must be paid at the time the records are provided to the requester. A fee schedule for the direct and indirect costs of photocopying or compiling a record may be obtained from the appropriate records officer.

R698-2-7. Waiver of Fees.

Fees for photocopying and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203(3). Request for this waiver of fees shall be made to the appropriate records officer.

R698-2-8. Requests for Access for Research Purpose.

Access to private or controlled records for research purposes shall be accomplished in accordance with Subsection 63-2-202(8). Requests for access to such records for research purposes shall be made to the appropriate records officer.

R698-2-9. Intellectual Property Records.

When the Department determines that it owns an intellectual property right, it may elect to duplicate and distribute such materials in accordance with Subsection 63-2-201(10). Decisions with regard to these materials will be made by the Department Records Officer. Any questions regarding the photocopying and distribution of such materials should be addressed to the Department Records Officer.

R698-2-10. Request to Amend a Record.

An individual may contest the accuracy or completeness of a document pertaining to him/her pursuant to Section 63-2-603. Such request should be made to the appropriate records officer.

R698-2-11. Appeals of Requests to Amend a Record.

Appeals of requests to amend a record shall be handled as informal adjudicative proceedings under the Utah Administrative Procedures Act. See Chapter 46b, Title 63.

R698-2-12. Appeals.

The Department Administrative Law Judge, 4501 South 2700 West, Salt Lake City, Utah 84119, shall serve as the designee of the Commissioner of Public Safety for the purpose of determining discretionary access to records as set forth in Subsection 63-2-201(5)(b) and also for the purpose of hearing appeals as set forth in Section 63-2-401.

KEY: government documents, freedom of information, public records
1993 63-2-204
Notice of Continuation December 5, 2016

R698. Public Safety, Administration.
R698-3. Americans With Disabilities Act (ADA) Complaint Procedure.
R698-3-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 63-46a-3(2) of the State Administrative Rulemaking Act. The Department of Public Safety (hereinafter; department), hereby adopts and defines, a complaint procedure to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

B. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this department, or be subjected to discrimination by this department.

R698-3-2. Definitions.

A. "The Department ADA Coordinator" means the Department of Public Safety's coordinator, or his designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management; and
(5) Office of the Attorney General.

C. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

D. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E. "Individual with a disability" (hereinafter "individual") means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department of Public Safety, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

R698-3-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the department's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

(1) include the individual's name and address;
(2) include the nature and extent of the individual's disability;
(3) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
(4) describe the action and accommodation desired; and
(5) be signed by the individual or by his or her legal representative.

D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R698-3-4. Investigation of Complaint.

A. The ADA Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3 (C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;
(2) facility modifications; or
(3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R698-3-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or another acceptable suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R698-3-6. Appeals.

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information classified as private or controlled, by the department's executive director or designee.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve the executive director or designee to:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;
(2) facility modifications; or
(3) reclassification or reallocation in grade; he shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

G. If the executive director or his designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

R698-3-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Part 35.170, 1992 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, disabilities act*
1993 67-19-32
Notice of Continuation December 13, 2016

R698. Public Safety, Administration.
R698-5. Hazardous Chemical Emergency Response Commission.
R698-5-1. Purpose.

This rule provides the procedures for establishing a state hazardous chemical emergency response commission advisory committee, the creation, modification or dissolving of local emergency planning committees, and supervising the overall planning and direction of the local emergency planning committees.

R698-5-2. Authority.

This rule is required by Subsection 53-2a-702(2).

R698-5-3. Definitions.

(1) "Advisory Committee" means State Emergency Response Commission Advisory Committee.

(2) "EPCRA" means Emergency Planning and Community Right-to-Know Act of 1986.

(3) "LEPC" means Local Emergency Planning Committee.

(4) "SERC" means State Hazardous Chemical Emergency Response Commission.

(5) "SERC Advisory Committee" means State Hazardous Chemical Emergency Response Commission Advisory Committee.

(6) "Tier II chemical inventory report" means a report required to be submitted to the LEPC under Section 312 of the Emergency Planning and Community Right-to-Know Act, which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 42 U.S.C. Section 11022.

R698-5-4. State Emergency Response Commission Advisory Committee.

(1) There is created by the Department of Public Safety, the State Hazardous Chemical Emergency Response Commission Advisory Committee.

(2) The Advisory Committee's duties are to provide direction to the SERC in the following matters:

(a) the creation, modification or dissolving of local emergency planning committees;

(b) methods and procedures to improve the effectiveness of the LEPC;

(c) the review of LEPC hazardous materials emergency response plans;

(d) the development of procedures for collection, processing, use and public access to information submitted as required by EPCRA;

(e) procedures for the distribution of funding to each LEPC obtained through the US Department of Transportation Hazardous Materials Emergency Preparedness Grant;

(f) hazardous materials emergency response planning efforts; and,

(g) the review of the State Emergency Operations Plan, Emergency Support Function 10 -- Hazardous Materials Annex.

(3) The Advisory Committee's members shall be appointed by the SERC, shall serve four year terms, and shall consist of the following members:

(a) A member representing the hazardous chemical transportation industry.

(b) Two members representing fixed site regulated industries.

(c) A member representing the environmental cleanup contractors.

(d) A member representing the local health departments.

(e) A member representing the urban LEPC.

(f) A member representing the rural LEPC.

(g) A member representing the Hazardous Materials Advisory Council.

(h) A member representing established environmental interest groups.

(i) A member representing the Utah National Guard.

(j) Two members from the general public.

(4) The Advisory Committee shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

(5)(a) The Advisory Committee shall select one of its members to act in the position of chair, and another member to act as vice chair.

(b) The chair and vice chair shall serve one year terms on a calendar year basis.

(c) Elections for chair and vice chair shall occur at the meeting conducted in the first quarter of each calendar year.

(d) If voted upon by the Advisory Committee, the vice chair will become the chair the next succeeding calendar year.

(6) 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.

(7) A member of the Advisory Committee that cannot be in attendance may:

(a) have a representative of their respective organization attend and vote by proxy for that member; or

(b) have another Advisory Committee member vote by proxy, if submitted and approved by the chair prior to the meeting.

(8)(a) The chair or vice chair of the Advisory Committee shall report to the SERC the activities of the Advisory Committee at regularly scheduled SERC meetings; or

(b) 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.

(9) The Advisory Committee shall:

(a) consider all subjects presented to them;

(b) consider subjects assigned to them by the SERC; and

(c) report their recommendations to the SERC at scheduled SERC meetings.

(10) One-half of the members of the Advisory Committee shall be reappointed or replaced by the SERC every two years.

(11) When a vacancy occurs in the Advisory Committee, a replacement shall be appointed by the SERC to complete the remainder of the term.

R698-5-5. Local Emergency Planning Committee.

(1) The creation, modification or dissolution of an LEPC shall be approved by the SERC.

(2) A jurisdiction requesting the formation of an LEPC shall provide the following information to the SERC Advisory Committee:

(a) a plan for coordinating the proposed additional LEPC with the county LEPC and/or any other city formed LEPC in that county.

(b) an assessment of the jurisdiction's population and hazardous materials risk, to include but not limited to fixed facilities, rail, highways, and hazardous material pipelines; and

(c) A determination of how that agency, if allowed to form an LEPC, would meet all federal LEPC standards as identified in 42 USC Chapter 116.

(3) By July 1 of each year LEPCs shall submit the following information to the Utah Department of Public Safety, Division of Emergency Management, contact information for the LEPC:

(a) chair;

(b) co-chairs;

(c) vice-chairs; and

(d) members employed by a local government organization designated to receive tier II chemical inventory reports.

(4) An LEPC wishing to dissolve shall submit the

following to the SERC Advisory Committee:

(a) reasons why the dissolution is in the best interest of the public served by the LEPC;

(b) a formal agreement with another LEPC addressing:

(i) the assumption of LEPC duties identified in 42 U.S.C. Chapter 116;

(ii) the transfer of remaining LEPC operational funds; and

(iii) the assumption of outstanding LEPC financial obligations; and

(c) a plan to notify facilities located within the jurisdiction of the dissolving LEPC who submitted chemical inventory or chemical emergency planning information to the LEPC within the previous year, providing notice of the LEPC dissolution and providing the name and mailing address of the LEPC assuming the dissolving LEPC duties.

(5) The SERC Advisory Committee shall evaluate information submitted in accordance with Subsections R698-5-4(2) through R698-5-4(4) and shall make a recommendation to the SERC concerning LEPC creation, modification or dissolution.

(6) The SERC shall consider the following in its decision to approve or disapprove the formation, modification or dissolution of an LEPC:

(a) the recommendation of the SERC Advisory Committee;

(b) all information submitted to the SERC Advisory Committee; and

(c) the comments of directly affected LEPCs.

(7) The LEPC shall coordinate its overall planning and direction with the SERC.

(i) The SERC shall supervise the overall planning and direction of the LEPC.

(8) The LEPC shall submit a copy of their hazardous materials emergency response plan to the SERC for review.

(9) The SERC shall approve the amount of US Department of Transportation Hazardous Materials Emergency Preparedness Grant funding to be given to each LEPC and shall establish criteria for that funding to be awarded.

R698-5-6. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the SERC shall proceed informally as authorized by Sections 63G-4-201 through 63G-4-203.

(2) An agency whose request to create, modify or dissolve an LEPC is denied by the SERC shall have an opportunity for a hearing before the SERC if requested by that agency within 20 days after receiving notice.

(4) The SERC shall act as the hearing authority, and shall convene after timely notice to all parties involved.

(a) The members of the SERC acting as the hearing authority shall consist of:

(i) the Commissioner of the Department of Public Safety; and

(ii) the Executive Director of the Department of Environmental Quality.

(b) The SERC shall also be joined when acting as the hearing authority by a representative from the Attorney General's Office.

(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 Section 63G-4-203.

(6) Reconsideration of the SERC decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(7) Judicial review of all final SERC actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

KEY: state emergency response commission
December 6, 2016 **53-2a-702**
Notice of Continuation August 14, 2014

R728. Public Safety, Peace Officer Standards and Training.
R728-401. Training Academy Requirements.
R728-401-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-401-2. Purpose.

The purpose of this rule is to provide procedures regarding the operation of training programs.

R728-401-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Agency-sponsored applicant" means a person seeking admission into a training program who is a full time, paid employee of a governmental entity, and who the division has responsibility to train as defined in Section 53-6-212, "agency-sponsored applicant" does not include a part-time, reserve, or contract employee;

(b) "Satellite academy" means a certified academy or training program administered by a governmental entity or institution of higher education that is established primarily for the training of its employees or self-sponsored applicants;

(c) "Self-sponsored applicant" means a person seeking admission into a training program who is responsible for paying the cost of the training program;

(d) "Training program" means the basic training courses offered by the division or one of the satellite academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher.

R728-401-4. Admission into a Training Program.

(1) All applicants seeking to attend a training program must submit an application packet to the division in accordance with R728-403.

(2) The division shall pay the costs of an agency-sponsored applicant to attend the training program offered at POST.

(a) The agency-sponsored applicant's employer must verify the applicant is a full-time employee of a governmental entity who will be functioning as a peace officer.

(3) Self-sponsored applicants shall be responsible for paying all costs associated with the training program.

(a) Self-sponsored applicants may only attend a training program offered at POST if special circumstances exist and approval has been granted by the director.

R728-401-5. Approval of Satellite Academies.

(1) A law enforcement agency, correctional agency, or institution of higher learning that meets the conditions and requirements set forth below may conduct a basic peace officer training program that is primarily established for the training of self-sponsored applicants, with the approval of the council.

(2) An entity seeking to operate a satellite academy shall submit to the director, a request in writing and include documentation of:

(a) the background and qualifications of the individual who will be the director of the satellite academy; and

(b) the need to operate the satellite academy through evidence that:

(i) there are no satellite academies within a 30 mile radius of the location where the new academy will operate;

(ii) a law enforcement agency in the county or region has requested, in writing, that the entity operate a satellite academy;

(iii) a satellite academy operating within the county, region or within 30 miles of the location of the applying entity has indicated that it is unable to meet the demand for training; or

(iv) the entity will provide a unique or specialized training program that is not currently offered in the county, region, or within 30 miles of the location of the applying entity.

(3) The division, with the approval of the council, may authorize an entity to operate a satellite academy if the entity demonstrates there is a need for additional training programs:

(a) in the county or region where the proposed satellite academy is to operate; or

(b) that cannot reasonably be met by the division.

R728-401-6. Procedures for Course Validation.

(1) Courses taught at training programs shall contain the content and meet the requirements established by the division and approved by the council.

(2) A satellite academy shall provide the division with a class schedule and a list of instructors before training may begin.

(3) A satellite academy shall ensure that all equipment required to perform the training be furnished by the sponsoring agency, self-sponsored applicant, or training facility; and that such equipment meets POST standards.

(4) All instructors must be POST certified instructors, and approved to instruct in their assigned topic.

(a) Instructors teaching academic portions of the curriculum must have completed an instructor development course recognized by the division and received POST certification as outlined in R728-502-5.

(b) Instructors teaching skill portions of the curriculum must have completed the specialty instructor requirements for the specific skill area being taught and received POST certification as outlined in R728-502-9.

(c) Subject matter experts may be used as guest instructors.

(5) Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives.

(6) The POST approved on-line assessment system shall be utilized to administer all tests and examinations.

(a) Tests and examinations shall be administered as outlined in the approved curriculum.

(b) Program coordinators must proctor all tests and examinations.

(c) The final certification exam shall not be administered until the student has completed all academic requirements of the course.

(d) The final certification examination shall be a comprehensive examination and shall require a minimum score of 80% to pass.

(7) Physical fitness assessment standards are set by the division and approved by the council.

(a) Program coordinators must administer the physical fitness assessment in accordance with POST approved procedures.

(8) Attendance rosters shall be kept to satisfy statutory requirements and copies of these rosters shall be submitted to the division.

(a) A student who has missed more than 16 hours of a basic peace officer course, or four hours of a basic dispatcher course, may not become certifiable until appropriate makeup work has been completed.

(b) If, as determined by the academy staff, a student has missed a significant part of any subject or block of instruction, that student may not be certifiable until appropriate make-up work is completed.

(9) Successful completion of the course and completion of

all POST required documentation is necessary before the student may be certifiable.

(a) All documentation must be completed and submitted to the division within 14 calendar days of completion of the course.

(10) The division shall conduct audits and site visits of each satellite academy to ensure compliance with all rules established herein.

KEY: dispatchers, peace officers, satellite academies, training programs

August 23, 2016	**53-6-105**
Notice of Continuation December 13, 2016	**53-6-202**
	53-6-212
	53-6-310

R728. Public Safety, Peace Officer Standards and Training.
R728-403. Procedures for Certification.
R728-403-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-403-2. Purpose.

The purpose of this rule is to provide procedures for a dispatcher or peace officer to become certified or reactivate certification.

R728-403-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Actively Engaged" means a currently certified peace officer as defined in Section 53-13-102 through 53-13-105 who works while on duty as defined in 53-13-101 for a minimum of 60 hours per reporting year and receives annual training as defined in Section 53-6-306(3)(a).

(b) "Applicant" means a person seeking to become certified or reinstate certification as a dispatcher or peace officer;

(c) "Certification examination" means the written test given to an applicant to become certified or to reactivate certification as a dispatcher or peace officer;

(d) "Physical fitness test" means the physical fitness standards adopted by the council on June 4, 2009, which must be met in order to become a peace officer;

(e) "Reporting year" means an annual period starting on July 1, and ending on June 30 of the following year;

(f) "Training program" means the basic training courses offered by the division or one of the certified academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher; and

(g) "Training year" means the same as reporting year.

R728-403-4. Application for Training and Certification.

(1) An applicant seeking to become certified as a dispatcher or peace officer shall submit a completed application packet to the division that includes:

(a) a written or electronic application form provided by the division;

(b) a photocopy of a government-issued identification card;

(c) evidence that the applicant is a United States citizen to include a photocopy of a birth certificate or a photocopy of a United States passport, or, in the case of naturalized citizen, a naturalization number;

(d) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(e) one recent color photograph of passport quality with the applicant's name written on the back of the photograph;

(f) evidence that the applicant has completed high school or obtained the educational equivalent; and

(g) the application fee, unless the applicant has been hired as a dispatcher or peace officer by a governmental entity.

(2) An applicant seeking to become a certified peace officer shall also submit:

(a) proof that the applicant has achieved a passing score on the National Peace Officer Selection Test (NPOST), unless the applicant was certified as a special functions officer prior to 1997 and is applying to become a law enforcement officer or correctional officer; and

(b) a medical evaluation from a medical doctor indicating the applicant is able to participate in all aspects of the training program.

(3) The applicant must submit the application packet four weeks prior to the start of a training program to allow the division adequate time to process the application packet.

(a) The division shall not accept nor process any application that is not complete or fails to include all required attachments.

(4) An application shall be considered valid for one year from the time the application is completed by the applicant.

(5)(a) Once a completed application packet is received by the division, the packet shall be reviewed to determine if the applicant meets the requirements in Sections 53-6-203 or 53-6-302.

(b) If the division does not have sufficient information to make this determination, the division may request the applicant provide additional information.

(6)(a) In determining whether an applicant has demonstrated good moral character as required by Sections 53-6-203 or 53-6-302, the division shall conduct a criminal history background check of local, state, and national criminal history files to determine if the applicant has a criminal record.

(b) An applicant with a criminal history that contains any of the following shall be denied entrance into a training program and shall not receive certification:

(i) a conviction of a felony under state or federal law in this or any other state;

(ii) dismissal from the armed services under dishonorable conditions; or

(iii) a conviction of domestic violence, unless the conviction has been expunged or set aside.

(c) An applicant who has been convicted of, or involved in conduct which is a state or federal criminal offense, may not be allowed to attend a basic training program or receive POST certification for a period of time consistent with the POST Council disciplinary guidelines as approved by the council on June 5, 2013.

(i) The waiting period shall run from the date of the involvement, unless the applicant is still under court supervision (i.e. probation) for the violation, in which case the applicant will not be allowed to make application until the probation has been successfully completed or the applicant is no longer under court supervision.

(ii) Waiting periods shall run consecutively for applicants who have been convicted of or involved in multiple violations.

(d) Any activity involving the abuse of alcohol or drugs may be considered in determining whether an applicant will be allowed to attend a basic training program or receive POST certification.

(e) An applicant convicted of or involved in minor crimes not otherwise identified in this rule, including traffic violations that reflect a willful disregard for lawful behavior as evidenced by repetitiveness of conduct or other aggravating factors, shall not be allowed to attend a basic training program or receive POST certification prior to one year from the latest conviction or involvement.

(i) In cases where arrest warrants are issued, the one-year waiting period will begin at the time the warrant is served on the applicant.

(f) If an applicant is found to have falsified any information to gain admittance into a basic training program, a two-year waiting period shall be applied from the date the division becomes aware of the falsification.

(i) If the information falsified is covered by other sections of this rule, (i.e., state or federal criminal offense) and a specific waiting period is required, the division shall require the applicant to wait the longer of the two periods. Waiting periods will not be combined to run consecutively.

(ii) If an applicant completes the basic training program

and prior to taking the certification examination the division becomes aware of a falsification, the applicant shall not be allowed to take the certification examination.

(iii) An applicant who is dismissed during the course of a basic training program for falsifying any information to obtain certification shall not be eligible for further POST training or certification until the two-year waiting period has been met.

(iv) If an applicant becomes certifiable and then is subsequently discovered to have falsified information to obtain certified status, that individual may be subject to suspension of their POST certification.

(7) If the applicant is the subject of an ongoing investigation by the division, the applicant shall not be deemed eligible to attend a training program until the investigation is completed.

(8) If the division determines that the applicant meets all of the requirements in Sections 53-6-203 or 53-6-302, the division shall notify the applicant that the applicant is eligible to attend a training program.

(9) If the division determines that the applicant does not meet the requirements in Sections 53-6-203 or 53-6-302, the applicant shall be denied admission to a training program.

(10) Applicants who are accepted into a peace officer training program shall pass the POST physical fitness requirements for entrance into the specific training program as approved by the Council and outlined in POST policy and procedure 2390-Physical Training Requirements.

(11) Applicants who are accepted into a peace officer training program shall be subject to random and "for cause" drug testing as outlined in POST policy and procedure 2400-Drug Testing for Applicants and Cadets.

(12) Applicants seeking dispatcher certification must also provide evidence of:

(a) Utah Emergency Medical Dispatcher (EMD) certification;

(b) Bureau of Criminal Identification (BCI) proficiency certificate; and

(c) documentation showing completion of:

(i) Incident Command System (ICS) 100 training;

(ii) ICS 200 training; and

(iii) National Incident Management System (NIMS) 700 training.

R728-403-5. Completion of a Training Program.

(1) An applicant successfully completes the training program by:

(a) attending all required training courses;

(b) obtaining passing scores on all intermediate and subject specific tests; and

(c) participating in all required physical fitness, practical skill training and other required activities.

(2) Applicants shall be subject to all officially published policy at the training academy they attend.

(3) An applicant who fails to complete any portion of the academic training program may not take the certification examination.

(4) An applicant may take the certification examination prior to passing the physical fitness, defensive tactics, firearms, or emergency vehicle operations tests.

(5) An applicant who is unable to pass the physical fitness, defensive tactics or firearms tests, within one year after completing the training program or within one year of taking the certification examination shall be denied certification.

(6) An applicant who is unable to pass the emergency vehicle operations tests within one year from completion of the emergency vehicle operations training program shall be denied certification.

(7) An applicant who fails the certification examination shall have one opportunity to take a make-up examination within one year of the first examination.

(a) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes another approved basic training program.

(8) An applicant who successfully completes the training program shall be certified as a peace officer in the state of Utah.

R728-403-6. Waiver of Basic Training Program.

(1) An applicant who has not attended a training program offered by the division or a satellite academy, may seek to waive a training program by submitting a completed waiver packet to the division, which includes:

(a) a completed application packet as provided in R728-403-4;

(b) documentation showing that the applicant has completed training equivalent to the training program the applicant is seeking to waive, such as:

(i) a copy of the training curriculum;

(ii) the number of hours completed; and

(iii) the date the training was completed; and

(c) evidence of any prior employment as a dispatcher or peace officer that includes:

(i) a detailed job description; and

(ii) verification from the applicant's employer of the last date the applicant worked as a dispatcher or peace officer.

(2) Once the division has received a completed waiver packet, the division shall review the packet to determine if the training completed by the applicant is the equivalent of the training program the applicant seeks to waive.

(a) If the division does not have sufficient information to make this determination, the division may request that the applicant submit additional information.

(3) If the division determines the peace officer training completed by the applicant is the equivalent of the peace officer training program the applicant seeks to waive, and the program was completed less than four years prior to the date the applicant will take the certification examination, or the applicant has been actively engaged in performing the duties of a peace officer within the past four years, and the applicant meets all of the requirements in R728-403-4 and Sections 53-6-203 and 53-6-206, the applicant may take the physical fitness test and the certification examination.

(a) If the applicant passes both the physical fitness test and the certification examination, the applicant shall be certified as a peace officer in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes an approved basic training program.

(d) If the applicant fails to pass the physical fitness test, the applicant may be given additional opportunities to pass during regularly scheduled fitness tests provided by POST.

(e) The applicant must pass the certification examination and the physical fitness test within four years from the date of completion of the original training program, or four years from the date they were last actively engaged in the duties of a peace officer.

(f) An applicant who successfully completes the waiver process for law enforcement officer certification or correctional officer certification shall be deemed to have also completed requirements for special functions officer certification.

(g) An applicant seeking to be certified as both a law

enforcement officer and a correctional officer must complete the waiver process and pass the certification examinations for each of those peace officer classifications.

(4) If the division determines that the dispatcher training completed by the applicant is the equivalent of the training program the applicant seeks to waive, and the program was completed less than four years prior to the date the applicant will take the certification examination, or the applicant has been actively engaged in performing the duties of a dispatcher within the past four years, and the applicant meets all of the requirements in R728-403-4 and Sections 53-6-302 and 53-6-304, the applicant may take the certification examination.

(a) If the applicant passes the certification examination, the applicant shall be certified as a dispatcher in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes an approved basic training program.

(5) If the applicant fails to meet any of the requirements set forth in this rule, the applicant may not waive the training program.

R728-403-7. Reactivation of Certification.

(1) Pursuant to Section 53-6-208 or 53-6-306, the certification of a peace officer or dispatcher who has not been actively engaged in performing the duties of a peace officer or dispatcher for 18 months shall be designated "inactive".

(a) The certification of a peace officer or dispatcher that has been suspended for more than 18 consecutive months due to disciplinary action or failure to complete in-service training shall be considered "inactive".

(2) An applicant whose certification has become inactive may reactivate the applicant's peace officer or dispatcher certification by submitting a completed reactivation packet to the division, which includes:

(a) a completed application packet as provided in R728-403-4; and

(b) evidence of the applicant's prior employment as a dispatcher or peace officer.

(3) Once the division has received a completed reactivation packet, the division shall review the packet to determine if the applicant meets all of the requirements in Sections 53-6-203 and 53-6-208, or 53-6-302 and 53-6-306.

(a) If the division does not have sufficient information to make this determination, the division may request the applicant submit additional information.

(4) If an applicant for reactivation of peace officer certification meets all of the requirements in Sections 53-6-203 and 53-6-208, the applicant may take the physical fitness test and the certification examination as provided in R728-403-5.

(a) If the applicant passes both the physical fitness test and the certification examination, the applicant shall be certified as a peace officer in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily complete an approved basic training program.

(d) If an applicant fails to pass the physical fitness test, the applicant may be given additional opportunities to pass during regularly scheduled fitness tests provided by POST.

(4) If an applicant for reactivation of dispatcher certification meets all of the requirements in Sections 53-6-302 and 53-6-306, the applicant may take the certification examination, as provided in R728-403-5.

(a) If the applicant passes the certification examination, the applicant shall be certified as a dispatcher in the state of Utah.

(b) If the applicant fails to pass the certification examination they will be given one additional opportunity to pass the certification examination which must be completed within one year of the first examination.

(c) An applicants who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily complete an approved basic training program.

(5) If the applicant for reactivation of peace officer or dispatcher certification fails to meet any of these requirements, the applicant's certification may not be reactivated.

(6) The certification of a peace officer or dispatcher that has been suspended or inactive for more than four consecutive years shall be considered "lapsed" and the peace officer or dispatcher shall comply with the requirements in Section 53-6-208 or 53-6-306 before certification may be reinstated.

R728-403-8. Denial of Certification.

(1) An applicant shall be denied certification for failing to satisfy any of the requirements under administrative rule R728-403.

(2) An applicant who is the subject of an ongoing investigation by the division, or who is under court supervision for a state or federal criminal offense, may not be certified until the investigation has been completed and/or the court supervision has been terminated.

(3) If the division denies an applicant certification, the division shall issue a letter of denial by mail.

(a) The letter of denial shall state the reasons for denial and indicate that the applicant may appeal the decision to the director by filing a written request for review within 30 days from the date of the division's decision as provided by Section 63G-4-301.

(b) Within a reasonable time after receiving the appeal, the director shall review the matter and determine whether the applicant may be certified.

(c) If upon further review the director denies the applicant's appeal, the director shall notify the applicant by letter and indicate that the applicant has the right to appeal the director's decision by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

(4) An applicant who has been denied certification shall meet all of the requirements in this rule before being certified.

(5) All adjudicative proceedings under this rule shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.

KEY: dispatchers, peace officers, certifications, waivers

August 23, 2016	**53-6-203**
Notice of Continuation December 13, 2016	**53-6-205**
	53-6-206
	53-6-208
	53-6-302
	53-6-303
	53-6-304
	53-6-306

R728. Public Safety, Peace Officer Standards and Training.
R728-409. Suspension, Revocation, or Relinquishment of Certification.
R728-409-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-409-2. Purpose.

The purpose of this rule is to establish procedures for the suspension, revocation, or relinquishment of a respondent's certification.

R728-409-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "ALJ" means an administrative law judge who conducts administrative hearings as described in Subsections 53-6-211(3) and 53-6-309(3);

(b) "On duty" means that a respondent is:

(i) actively engaged in any of the duties of the respondent's employment as a peace officer or dispatcher;

(ii) receiving compensation for activities related to the respondent's employment as a peace officer or dispatcher;

(iii) on the property of a law enforcement facility, correctional facility or dispatch center;

(iv) in a law enforcement vehicle which is located in a public place; or

(v) in a public place and is wearing a badge or uniform, authorized by the respondent's employer, which readily identifies the wearer as a peace officer or dispatcher;

(c) "Relinquish" means the permanent deprivation of the respondent's certification, to include any and all peace officer or dispatcher certifications, pursuant to Section 53-6-211.5 or 53-6-311, which precludes a respondent from:

(i) admission into a training program conducted by, or under the approval of, the division; or

(ii) reinstatement or restoration of the respondent's certification by the division;

(d) "Respondent" means a peace officer or dispatcher against whom the division has initiated an investigation or adjudicative proceeding under Sections 53-6-211 or 53-6-309;

(e) "Revocation" means the permanent deprivation of a respondent's certification, to include any and all peace officer or dispatcher certifications, which precludes a respondent from:

(i) admission into a training program conducted by, or under the approval of, the division; or

(ii) reinstatement or restoration of the respondent's certification by the division;

(f) "Sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and

(g) "Suspension" means the temporary deprivation of a respondent's certification, to include any and all peace officer or dispatcher certifications; and,

(h) "Traffic offense" means all offenses in the following parts:

(i) 41-6a, Part 3, Traffic-Control Devices;

(ii) 41-6a, Part 6, Speed Restrictions;

(iii) 41-6a, Part 7, Driving on Right Side of Highway and Passing;

(iv) 41-6a, Part 8, Turning and Signaling for Turns;

(v) 41-6a, Part 9, Right-of-Way;

(vi) 41-6a, Part 10, Pedestrians' Rights and Duties;

(vii) 41-6a, Part 11, Bicycles, Regulations of Operation;

(viii) 41-6a, Part 12, Railroad Trains, Railroad Grade Crossings, and Safety Zones;

(ix) 41-6a, Part 13, School Buses and School Bus Parking Zones;

(x) 41-6a, Part 14, Stopping, Standing, and Parking;

(xi) 41-6a, Part 15, Special Vehicles;

(xii) 41-6a, Part 16, Vehicle Equipment;

(xiii) 41-6a, Part 17, Miscellaneous Rules; and

(xiv) 41-6a, Part 18, Motor Vehicle Safety Belt Usage Act.

R728-409-4. Investigative Procedure.

(1) The division shall initiate an investigation when it receives information from any reliable source that a violation of Subsections 53-6-211(1) or 53-6-309(1) has occurred, including when:

(a) A respondent is charged with or convicted of a crime;

(b) There is evidence a respondent has engaged in conduct which is a criminal act under law, but which has not been criminally charged or where criminal prosecution is not anticipated;

(c) A respondent's employer notifies the division that the respondent has been investigated, disciplined, terminated, retired or resigned as a result of conduct in violation of Subsections 53-6-211(1) or 53-6-309(1);

(d) A person makes a complaint regarding a violation of Subsections 53-6-211(1) or 53-6-309(1) and there is independent evidence to support the complaint;

(e) violation of Subsections 53-6-211(1) or 53-6-309(1) is reported in the media and there is independent evidence to confirm that the conduct occurred; or

(f) A background investigation indicates that a respondent has engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1).

(2) The division may not investigate conduct which is limited to:

(a) A violation of an employer's policy or procedure; or

(b) Sexual activity protected under the right of privacy recognized by the United States Supreme Court in Lawrence v. Texas, 539 U.S. 558 (2003).

(3) A person seeking to file a complaint against a respondent may be asked to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.

(4) An investigator from the division shall be assigned to investigate the complaint and ensure that the investigation is fully documented in the investigative case file.

(5)(a) If a respondent under investigation is employed as peace officer or dispatcher, the division shall notify the respondent's employer concerning the complaint or investigation, unless the nature of the complaint would make such a course of action impractical.

(b) The division shall keep a record of the date the employer and the respondent are notified.

(6) The division shall refer any complaints of a criminal nature against a respondent to the appropriate law enforcement agency having jurisdiction over the crime for investigation and prosecution if such a referral has not already been made.

(7) If the respondent's employer has an open and active investigation, the division may wait until the employer has completed its investigation before taking action unless the division determines it is not in the public's best interest to delay the investigation.

(8) The division may use the information gathered by the respondent's employer in its investigation.

(9) The division shall take action based on the actual conduct of the respondent as determined by the division's own independent investigation, not on any findings or sanctions issued by the respondent's employer or the court.

(10) Witnesses and other evidence may be subpoenaed during an investigation pursuant to Sections 53-6-210 and 53-6-308.

(11) If ordinary investigative procedures cannot resolve the facts at issue, a respondent may be requested to submit to a polygraph examination.

(12) The director may immediately suspend a respondent's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

(13) Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

(14) If the division determines there is insufficient evidence to find that a respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the director shall issue a letter to the respondent indicating that the investigation has been concluded and that the division shall take no action.

R728-409-5. Purpose of Adjudicative Proceedings.

(1) The purpose of an adjudicative proceeding is to determine whether there is sufficient evidence to find that the respondent engaged in the conduct alleged in the Notice of Agency Action by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsections 53-6-211(1) or 53-6-309(1).

(2) All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a respondent's certification shall be formal proceedings as provided by Section 63G-4-202.

R728-409-6. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.

(1) Except as provided by 63G-4-502, all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a respondent's certification shall be commenced by the filing of a Notice of Agency Action.

(2) The Notice of Agency Action shall be signed by the director and comply with the requirements of Section 63G-4-201.

(3) The Notice of Agency Action shall be filed with the division and a copy sent to the respondent by certified mail.

R728-409-7. Responsive Pleadings.

(1) The respondent shall file a written response with the division, signed by the respondent or the respondent's attorney, within 30 days of the mailing date of the Notice of Agency Action.

(2) The written response shall comply with the requirements in Section 63G-4-204.

R728-409-8. Hearing Waivers.

(1) Once a Notice of Agency Action has been issued, the division shall send a hearing waiver form to the respondent.

(2) The respondent shall have 30 days from the mailing date of the Notice of Agency Action to sign a hearing waiver.

(3)(a) If the respondent does not waive the right to a hearing before the ALJ, the adjudicative proceeding will continue.

(b) The period of time in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the respondent does not sign a hearing waiver.

(4) If the respondent signs a hearing waiver and files it with the division, the matter shall be heard at the next regularly scheduled council meeting.

R728-409-9. Default.

(1) The ALJ may enter an order of default against a respondent if:

(a) The respondent fails to file the response required in rule R728-409-7; or

(b) The respondent fails to attend or participate in the hearing.

(2) The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.

(3) The order of default shall be filed with the division and a copy sent to the respondent by certified mail.

(4)(a) The respondent may seek to set aside the default order by filing a motion within 90 days from the date of the order of default as provided in Section 63G-4-209.

(b) The ALJ may set aside an order of default for good cause shown.

R728-409-10. Scheduling a Hearing before the ALJ.

(1)(a) If the division receives a responsive pleading from the respondent, a notice containing the location, date and time for the hearing shall be issued by the division.

(b) The notice of hearing shall be filed with the division and a copy sent to the respondent by certified mail.

(2) The hearing shall be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

R728-409-11. Discovery and Subpoenas.

(1)(a) In formal POST adjudicative proceedings parties may conduct only limited discovery.

(b) A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

(2) Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.

(3)(a) The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq.

(b) The division may charge a fee for discovery in accordance with Section 63G-2-203.

(4) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Sections 53-6-210 and 53-6-308, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

R728-409-12. Hearing Procedures.

(1) All hearings shall be conducted by the ALJ in accordance with Section 63G-4-206.

(2)(a) At the hearing, the respondent has the right to be represented by an attorney.

(b) Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

R728-409-13. ALJ Decision.

(1) Within 30 days from the date a hearing is held, the ALJ shall sign and issue a written decision, which includes a statement of:

(a) The ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

(b) The ALJ's conclusions of law; and

(c) The reasons for the ALJ's decision.

(2) If the ALJ determines there is sufficient evidence to

find that the respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the ALJ's decision shall indicate that the matter will be heard at the next regularly scheduled council meeting.

(3) If the ALJ determines there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the matter shall be dismissed.

(4) The ALJ's decision shall be filed with the division and a copy sent to the respondent by certified mail.

R728-409-14. Action by the Council.

(1) If the respondent waives the right to a hearing with an ALJ, there has been an order of default, or a findings of fact is issued by the ALJ, the division shall present the matter to the council at its next regularly scheduled meeting.

(2) The division shall notify the respondent of the date, time, and location of the council meeting.

(3)(a) Prior to the council meeting, the division shall provide the council with the pleadings contained in the administrative file.

(b) The division shall also provide the council with any written information or comments provided by the respondent's employer.

(4) At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent's certification should be suspended or revoked.

(5) The council shall review the matter and determine whether suspension or revocation of the respondent's certification is appropriate based upon the facts of the case and the POST Disciplinary Guidelines which were adopted on June 7, 2010 and amended on January 4, 2016.

R728-409-15. Final Order.

(1) After the council has decided the matter, the council chairperson shall issue a final order within 30 days of the council meeting.

(2) The final order shall indicate the action taken by the council with regards to the respondent's certification and shall include information on the appeal process outlined in R728-409-16.

(3) The council's action shall be effective on the date that the final order is signed by the chairperson.

(4)(a) The final order shall be filed with the division.

(b) A copy of the final order shall be sent to:

(i) the respondent by certified mail; and

(ii) the respondent's employer by regular mail, if the respondent is employed as peace officer or dispatcher.

R728-409-16. Judicial Review.

(1) A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chairperson.

(2) The petition must meet all requirements specified in Sections 63G-4-401 and 63G-4-403.

R728-409-17. Relinquishment Procedures.

(1) At any time after the division receives a complaint that a respondent has engaged in conduct described in Subsections 53-6-211(1) or 53-6-309(1), a respondent who is the subject of the complaint may voluntarily relinquish the respondent's certification by submitting a Relinquishment of Certification form to the division.

(2) The Relinquishment of Certification form must be signed by the respondent and notarized.

(3) As soon as the division receives a properly executed Relinquishment of Certification form, the respondent's certification shall be terminated and the respondent will no longer be a certified peace officer or dispatcher.

(4) Upon the termination of the respondent's certification, the division's investigation into the complaint and any adjudicative proceedings will cease.

(5) Notice of the termination of the respondent's certification shall be provided to:

(a) The respondent;

(b) The respondent's employer if the respondent is employed as a peace officer or dispatcher; and

(6) The National Peace Officer De-Certification database administered by the International Association of Directors of Law Enforcement Standards and Training, if the respondent is a peace officer.

R728-409-18. Reporting Violations of 53-6-211(1) or 53-6-309(1).

(1) A chief, sheriff or administrative officer of an agency employing a certified peace officer or dispatcher who is made aware of an allegation against a certified peace officer or dispatcher employed by that agency as provided in Subsection 53-6-211(6)or 53-6-309(6)shall report the allegation to the division within 90 days if the allegation is found to be true.

(2) A chief, sheriff or administrative officer of an agency employing a certified peace officer or dispatcher who fails to report to the division within 90 days an allegation that is found to be true shall appear before the council at the next regularly scheduled council meeting to explain why the allegation was not reported.

KEY: certifications, investigations, revocations, relinquishments
November 12, 2015 53-6-211
Notice of Continuation December 19, 2016 53-6-211.5
53-6-309
53-6-311

R728. Public Safety, Peace Officer Standards and Training.
R728-410. Guidelines Regarding Annual Statutory Training.
R728-410-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-410-2. Purpose.

The purpose of this rule is to provide procedures regarding the reporting of annual statutory training.

R728-410-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Annual statutory training" means the annual training requirement for peace officers and dispatchers as established in sections 53-6-202 and 53-6-306;

(b) "In-service training" has the same meaning as annual statutory training;

(c) "Reporting year" means an annual period starting on July 1, and ending on June 30; and

(d) "Training year" means the same as reporting year.

R728-410-4. Annual Training Requirement.

(1) The director may waive a portion of the annual statutory training requirement under the following circumstances:

(a) a peace officer who is employed for only part of a year shall obtain three and one-half hours for each month employed during the reporting year;

(b) a dispatcher who is employed for only part of a year shall obtain one and three-fourth hours for each month employed during the reporting year; and

(c) a peace officer or dispatcher who terminates employment and then returns to work within 18 months shall be required to make up any annual training deficiency from the previous year.

(d) A peace officer or dispatcher who is on long term disability, medical leave, or restricted duty, may obtain a waiver of training by providing a letter from a physician stating that participation in any type of training, including watching video or computer based courses would be detrimental to the individual's health.

(e) A peace officer or dispatcher who is actively deployed in military service may obtain a waiver of training hours for active military service by submitting a copy of the active duty order to the division.

(i) The peace officer or dispatcher must obtain the prorated number of training hours for each month not actively deployed during the reporting year.

R728-410-5. Training Record Maintenance.

(1) The chief administrative officer of an agency employing peace officers or dispatchers shall be responsible for the recording of all training obtained by peace officers or dispatchers in his or her agency.

(2) The record must be accurate and available in the event of an audit or subpoena of training records.

(3) The training record shall contain the following:

(a) the subject or topic instructed;

(b) the number of classroom or field hours;

(c) the location and date of the training; and

(d) the name of the instructor.

R728-410-6. Reporting Training -- Agency Responsibility.

(1) At the conclusion of each training year, a chief administrative officer employing peace officers or certified dispatchers shall report to the division the number of training hours received by each officer or certified dispatcher employed by that agency at any time during the training year, regardless of the employee's current employment status.

(2) This report is due to the division by July 31.

(a) The report shall be submitted electronically and must contain the following information:

(i) name of the officer or dispatcher;

(ii) the POST identification number of each peace officer or dispatcher; and

(iii) the number of training hours received by each peace officer or dispatcher during the reporting year.

(3) The chief administrative officer shall follow procedures outlined in POST policy and procedures on reporting training hours.

R728-410-7. Authorized Training.

(1) All training offered by or though the division is authorized for in-service credit.

(2) The chief administrative officer of an agency may authorize other forms of training for peace officers or dispatchers employed by that agency.

(a) The chief administrative officer shall assume responsibility and liability for course content and instructor qualification not provided by the division.

R728-410-8. Suspension for Failure to Obtain Annual Statutory Training.

(1) The division shall suspend the certification of any peace officer or dispatcher who:

(a) fails to receive the required annual training hours by July 31; or

(b) for whom the chief administrative officer of the employing agency fails to report required training hours to the division by July 31.

(2) The individual and the employing agency shall be notified of this action in writing.

(3) The suspension shall remain in effect until the deficient training hours are completed and reported to the division.

(4) The division shall notify the individual and employing agency when the certification has been reinstated.

(5) If the individual fails to make up the deficient training by October 1, the individual's name shall be reported to Utah Retirement Systems (URS) for determination by URS as to how the deficient hours may affect the individual's retirement credit.

(a) Deficient hours reported to the division after October 1, shall only be used to reinstate peace officer status and will not be reported to URS.

(6) Training received by a suspended officer or dispatcher in a new training year shall be credited to the previous deficient training year until the deficiency is satisfied.

(a) Training hours used to satisfy an old deficiency may not be credited to the new training year.

KEY: law enforcement officers, annual training

August 23, 2016	**53-6-105**
Notice of Continuation December 19, 2016	**53-6-202**
	53-6-306

R728. Public Safety, Peace Officer Standards and Training.
R728-411. Guidelines for Administrative Action Against Individuals Functioning As Peace Officers Without Valid Peace Officer Certification.
R728-411-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-411-2. Purpose.

The purpose of this rule is to provide procedures for administrative action when an individual is found to be exercising the authority of a peace officer without valid peace officer certification.

R728-411-3. Definitions.

Terms used in this rule are defined in Section 53-6-102.

R728-411-4. Impersonating a Peace Officer.

(1) If the division becomes aware that an individual is illegally exercising the authority of a peace officer, the division shall refer the matter to the proper law enforcement agency having jurisdiction, for the following circumstances:

(a) when an individual has never been certified as a peace officer;

(b) when an individual's certification has been revoked by the council; and

(c) when an individual's certification has lapsed pursuant to Section 53-6-208.

R728-411-5. Unauthorized Exercise of Authority.

(1) If the division becomes aware that an individual whose peace officer certification is not currently active is exercising the authority of a peace officer, the division shall follow the administrative process outlined in Section R728-411-6, for the following circumstances;

(a) when an individual's certification has been suspended by the council;

(b) when an individual's certification has been suspended due to an annual training deficiency pursuant to Section 53-6-202;

(c) when an individual's certification has been designated "inactive" pursuant to Section 53-6-208; and

(d) when an individual has completed a basic training program and become certified, but is not "sworn" as provided in Sections 53-13-103 to 53-13-106.

(2) In any of the above circumstances the division may also refer the matter to the proper law enforcement agency having jurisdiction.

R728-411-6. Procedures Governing Unauthorized Exercise of Authority.

(1) If an individual is found to be performing the duties and functions of a peace officer without valid certification or authority as outlined in Section R728-411-5, the following procedures will be initiated by the division:

(a) written notice will be sent by standard mail, or electronically, to the individual and the individual's employing agency administrator indicating that the individual does not have the statutory authority to act as a peace officer in the State of Utah;

(b) The written notice shall:

(i) state that the individual should cease any and all activities as a peace officer; and

(ii) indicate the appropriate procedures for the individual and employing agency to follow in order for the individual to acquire peace officer authority.

(c) The individual must respond to the written notice within ten business days.

(2) Failure to submit a response within ten business days or failure to immediately cease the unauthorized exercise of authority, shall cause the division to seek a writ from the Attorney General's Office to cease and desist from acting as a peace officer in the State of Utah.

(a) The writ will be directed to the individual and the individual's employing agency.

(3) Failure to cease the unauthorized exercise of authority after the issuance of the writ, may result in:

(a) criminal charges being sought against the individual for a violation of Section 76-8-512.; and

(b) administrative action against the individual's certification for a violation of Section 53-6-211.

KEY: peace officer certification, impersonating a peace officer

August 23, 2016	**53-6-105**
Notice of Continuation December 13, 2016	**53-6-202**
	53-6-208
	53-13-103
	53-13-106

R746. Public Service Commission, Administration.
R746-312. Electrical Interconnection.
R746-312-1. Authority.

(1) This rule establishes procedures and standards for electrical interconnection of generating facilities to a public utility as provided for in Sections 54-3-2, 54-4-7, 54-4-14, 54-12-2, and 54-15-106.

R746-312-2. Definitions.

(1) "Adverse system impact" means the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric distribution system.

(2) "Affected system" means an electric system other than a public utility's electric distribution system that may be affected by the proposed interconnection.

(3) "Building code official" means the city or local official whose responsibility includes inspecting facilities for compliance with the city or local jurisdiction electrical code requirements.

(4) "Business day" means Monday through Friday, excluding Federal holidays.

(5) "Confidential information" means any confidential and/or proprietary information provided by one party to the other party that is clearly marked or otherwise designated "Confidential." For the purposes of this rule, all design, operating specifications, and metering data provided by the interconnection customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such. Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities, or necessary to be divulged in an action to enforce these procedures.

(6) "Electric distribution system" means that portion of an electric system that delivers electricity from transformation points on the transmission system to the point or points of connection at a customer's premises.

(7) "Equipment package" means, for certification purposes, a group of components connecting a generating facility's device for the production electricity (i.e., a generator) with an electric distribution system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric production source. An equipment package does not include equipment provided by the utility.

(8) "Fault current" means electrical current that flows through a circuit and is produced by an electrical fault, such as to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. A fault current is several times larger in magnitude than the current that normally flows through a circuit.

(9) "Facilities study" means a study conducted to determine the additional or upgraded distribution system facilities necessary to interconnect a generating facility with a public utility, the cost of those facilities, and the time schedule required to interconnect the generating facility to the public utility's distribution system.

(10) "Feasibility study" means a preliminary evaluation of the system impact and the cost of interconnecting a generating facility to the public utility's electric distribution system.

(11) "Generating facility" means the interconnection customer's device for the production of electricity and all associated components up to the point of common coupling identified in the interconnection request, but shall not include the interconnection customer's interconnection facilities.

(12) "Generation capacity" means the nameplate capacity of the power generating device(s) of a generating facility. Generation capacity does not include the effects caused by inefficiencies of power conversion or plant parasitic loads.

(13) "Good utility practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the public utility.

(14) "Governing Authority" means

(a) For a distribution electrical cooperative, its board of directors; and

(b) for each other electrical corporation, the Public Service Commission, otherwise referred to as the commission.

(15) "IEEE standards" means the Institute of Electrical and Electronics Engineers (IEEE) Interconnecting Distributed Resources with Electric Power Systems -- IEEE 1547 Series referenced in Section 54-15-102.

(16) "Interconnection agreement" means a standard form agreement between an interconnection customer and a public utility that governs the connection of a generating facility to the electric distribution system and the ongoing operation of the generating facility after it is connected to the system.

(17) "Interconnection customer" means any entity including a public utility that proposes to interconnect its generating facility with the public utility's distribution system.

(18) "Interconnection Facilities" means the facilities and equipment required by a public utility to accommodate the interconnection of a generating facility to the public utility's electric distribution system and used exclusively for that interconnection. Interconnection Facilities do not include upgrades.

(19) "Interconnection request" means the interconnection customer's request to interconnect a new generating facility, or to increase the capacity of, or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the public utility. The interconnection request includes all required applications, forms, processing fees and/or deposits required by the public utility.

(20) "Inverter" has the same meaning as in Section 54-15-102.

(21) "Level 1 Interconnection Review" means an interconnection review process applicable to an inverter-based facility having a generation capacity of 25 kilowatts or less.

(22) "Level 2 Interconnection Review" means an interconnection review process applicable to a facility having a generation capacity of 2 megawatts or less and that does not qualify for or fails to meet Level 1 interconnection review requirements.

(23) "Level 3 Interconnection Review" means an interconnection review process applicable to a facility having a generation capacity of greater than 2 megawatts but no larger than 20 megawatts, or the generating facility is not certified, or the generating facility does not qualify for or fails to meet Level 1 or Level 2 interconnection review requirements.

(24) "Net metering facility" means a facility eligible for net metering, or an eligible facility as defined in Section 54-15-102.

(25) "Party or parties" means the public utility and/or the interconnection customer.

(26) "Point of common coupling" means the point at which the interconnection between the public utility's system and the interconnection customer's equipment interface occurs.

Typically, this is the customer side of the public utility's meter.

(27) "Public utility" has the meaning set forth in Section 54-2-1 and is limited to a public utility that provides electric service.

(28) "Queue position" means the order of a valid interconnection request relative to all other pending valid interconnection requests that is established based upon the date and time of receipt of a completed interconnection request, including application fees, by the public utility.

(29) "Spot network" means a type of electric distribution system that uses two or more inter-tied transformers protected by network protectors to supply an electrical network circuit. A spot network is generally used to supply power to a single customer or a small group of customers.

(30) "Standard form" or "standard form agreement" means a form or agreement that follows that adopted or approved by the Federal Energy Regulatory Commission in its small generator interconnection proceedings and modified to be consistent with these rules unless the governing authority has approved an alternative form or agreement.

(31) "Switchgear" has the same meaning as in Section 54-14-102.

(32) "System Impact study" means an engineering analysis of the probable impact of a generating facility on the safety and reliability of the public utility's electric distribution system.

(33) "Telemetry" means the remote communication from a generator facility to a point on the public utility's communication network where the data can be assimilated into the public utility's grid operations if desired.

(34) "UL1741" means the UL Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources as referenced in Section 54-15-102.

(35) "Upgrades" means the required additions and modifications to a public utility's distribution system beyond the point of interconnection. Upgrades do not include interconnection facilities.

(36) "Written notice" means a required notice sent by the utility via electronic mail if the interconnection customer has provided an electronic mail address. If the interconnection customer has not provided an electronic mail address, or has requested in writing to be notified by United States mail, or if the utility elects to provide notice by United States mail, then written notices from the utility shall be sent via First Class United States mail. The utility shall be deemed to have fulfilled its duty to respond under this rule on the day it sends the interconnection customer notice via electronic mail or deposits such notice in First Class mail. The interconnection customer shall be responsible for informing the utility of any changes to its notification address.

R746-312-3. Purpose, Scope, Applicability and Exceptions.

(1) This rule establishes procedures for electrical interconnection of a generating facility to a public utility's distribution system with the following exception:

(a) All references to fees and charges in Section R746-312 do not apply to public utilities for which the commission does not have ratemaking authority as identified in Subsection 54-7-12(7). Rates and charges will be determined by the public utility's governing authority in accordance with applicable law.

(2) For good cause shown, the commission may waive or modify any provision of this electrical interconnection rule.

(3) A public utility and interconnection customer may mutually agree to reasonable extensions to the required times for notices and submissions of information set forth in this rule for the purpose of allowing efficient and complete review of an interconnection request. If a public utility unilaterally seeks waiver of the time lines set forth in this rule, the commission may consider the number of pending applications for interconnection review and the type of applications, including review level and facility size.

(4) A public utility shall provide to the interconnection customer information regarding options for complaint or dispute resolution during the interconnection request review process prior to or along with the results of the initial interconnection review.

(5) Complaints or disputes will be addressed as follows:

(a) residential interconnections will be addressed according to the provisions of Sections R746-200-4, R746-200-8 and R746-200-9.

(b) non-residential interconnections will be addressed according to the following procedure:

(i) In the event of a complaint or dispute, either party shall provide the other party with a written Notice of Dispute. Such notice shall describe in detail the nature of the dispute.

(ii) If the dispute has not been resolved within seven business days after receipt of such notice, the dispute shall be served upon the other party and filed with the commission. A copy shall also be served upon the Division of Public Utilities.

(iii) An answer or other responsive pleading to the complaint shall be filed with the commission not more than ten business days after receipt of service of the complaint or dispute. Copies of the answer or responsive pleading shall be served on the complainant and the Division of Public Utilities.

(iv) A prehearing conference shall be held not later than 15 business days after the complaint is filed.

(v) The commission shall commence a hearing on the complaint not later than 25 business days after the complaint is filed, unless the commission finds that extraordinary conditions exist that warrant postponing the hearing date, in which case the commission shall commence the hearing as soon as practicable. Parties shall be entitled to present evidence as provided by the commission's rules.

(vi) The commission shall take final action on a complaint not more than 30 business days after the complaint is filed unless:

(A) the commission finds that extraordinary conditions exist that warrant extending final action, in which case the commission shall take final action as soon as practicable; or

(B) the parties agree to an extension of final action by the commission.

R746-312-4. Installation, Operation, Maintenance, Testing and Modification of Generating and Interconnection Facilities.

(1) Except for generating facilities in operation or approved for operation prior to the effective date of this rule, an interconnection customer of a public utility must install, operate and maintain its generating and interconnection facilities in compliance with the IEEE standards, as applicable, and the requirements of the interconnection agreement or other agreements executed between the parties during the interconnection review and approval process. Generating facilities in operation or approved for operation prior to the effective date of this rule must be operated and maintained in accordance with the requirements of all agreements in place prior to the effective date of this rule.

(2) Disconnect Switch. Except for the exemptions listed below, an interconnection customer of a public utility must install and maintain a manual disconnect switch that will disconnect the generating facility from the public utility's distribution system. The disconnect switch must be a lockable, load-break switch that plainly indicates whether it is in the open or closed position. The disconnect switch must be readily accessible to the public utility at all times and located within 10 feet of the public utility's meter.

(a) Exemptions:

(i) For customer generating systems of 10 kilowatts or less

that are inverter-based, a public utility shall not require a disconnect switch.

(ii) The disconnect switch may be located more than 10 feet from the public utility's meter if permanent instructions are posted in letters of appropriate size at the meter indicating the precise location of the disconnect switch. In this case the public utility must approve in writing the location of the disconnect switch prior to the installation of the generating facility. For those instances where the interconnection customer and the public utility cannot agree to the implementation of this section, the public utility or interconnection customer may refer the matter to the commission according to the designated dispute resolution process.

(iii) Nothing in this exemption precludes an interconnection customer or a public utility from voluntarily installing a manual disconnect switch.

(3) In the event that no disconnect switch is installed, the interconnection customer's electric service may be disconnected by the public utility entirely if the generating facility must be physically disconnected from the public utility's distribution system as specified in Subsection R746-312-4(5).

(4) For those public utilities whose governing authority, pursuant to Section 54-15-106, after appropriate notice an opportunity for public comment, elects to adopt by rule additional reasonable interconnection safety, power quality and interconnection requirements for net metering generating facilities and who determines that a disconnect switch for net metering generating facilities less than 10 kilowatts is necessary, those public utilities must:

(a) address the usage of the disconnect switch in the public utility's operations training requirements and standard operating procedures, including, among other things, how the disconnect switches will be managed, including tracking of switches, the procedures under which the disconnect switch must be used during normal operations, construction projects, trouble situations, and during restoration of service activities, and training on operation and usage of the disconnect switch;

(b) file a copy of the disconnect switch procedures, and any updates, along with the governing authority's documentation of appropriate notice and opportunity for public comment with the commission; and

(c) document in writing each time the public utility has utilized each specific disconnect switch and the reason for its usage and make this information available to the commission upon request.

(5) The public utility may operate the manual disconnect switch or disconnect the customer generating facility pursuant to the conditions set forth below, thereby isolating the customer generating system, without prior notice to the customer. To the extent practicable, however, prior notice shall be given. If prior notice is not given, the utility shall at the time of disconnection leave a door hanger or other such notice notifying the customer that their customer generating system has been disconnected, including an explanation of the condition necessitating such action. The public utility shall reconnect the customer generating system as soon as reasonably practicable after the condition necessitating disconnection is remedied.

(a) Any of the following conditions shall be cause for the public utility to manually disconnect a generating facility from its system:

(i) Emergencies or maintenance requirements on the public utility's distribution system;

(ii) Hazardous conditions existing on the public utility's distribution system that may affect safety of the general public or public utility employees due to the operation of the customer generating facility or protective equipment as determined by the public utility; or

(iii) Adverse electrical effects (such as high or low voltage, unacceptable harmonic levels, or RFI interference) on the electrical equipment of the public utility's other electric consumers caused by the customer generating facility as determined by the public utility.

(6) Subsequent to becoming interconnected to a public utility the interconnection customer must notify the public utility of all proposed modifications to the generating facility or equipment package that will increase the generation capacity of a customer generation facility.

(a) Notification must be provided in the form of a new application submitted in accordance with the level of review required by this rule; and

(b) The application must specify the proposed modification(s).

(7) Aggregating Multiple Generators: If the interconnection request is for a generating facility which includes multiple generating facilities at a site for that the interconnection customer seeks a single point of interconnection, the interconnection request must be evaluated for the purposes of the interconnection on the basis of the aggregate electric nameplate capacity of the generating facilities.

R746-312-5. Certifications.

(1) To qualify for the Level 1 and the Level 2 interconnection review procedures set forth below, a generating facility must be certified as complying with the following standards, as applicable:

(a) IEEE standards; and

(b) UL1741.

(2) An equipment package will be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with relevant codes and standards.

(3) If the equipment package has been tested and listed in accordance with this section as an integrated package that includes a generator or other electric source, the equipment package will be deemed certified, and the public utility may not require further design review, testing or additional equipment.

(4) If the equipment package includes only the interface components (switchgear, inverters, or other interface devices), an interconnection customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and consistent with the testing and listing specified for the package. If the generator or electric source being utilized with the equipment package is consistent with the testing and listing performed by the nationally recognized testing and certification laboratory, the equipment package will be deemed certified, and the public utility may not require further design review, testing or additional equipment.

R746-312-6. General Interconnection Request Provisions.

(1) Each public utility must designate an employee, office, or department from which a customer can obtain basic interconnection request standard forms, standard form agreements, and information through an informal process. Upon request, this employee, office, or department must provide all relevant forms, documents, and technical requirements for submittal of a complete application for interconnection review. Upon request, the public utility must meet with a customer who qualifies for Level 2 or Level 3 interconnection review, to assist them in preparation of the application. All standard forms and standard form agreements must be posted on the public utility's website.

(2) The interconnection customer must submit each interconnection request, and all associated forms and agreements on the public utility's standard forms and standard form agreements.

(3) The interconnection request may require the following types of information:

(a) the name of the applicant and basic customer information;

(b) the type, size and specifications of the generating facility;

(c) the level of interconnection review sought; e.g., Level 1, Level 2 or Level 3;

(d) the generating facility installer: i.e., for contractor installations, the name of the appropriately licensed contractor, or for self-installations, the name of the homeowner or business;

(e) equipment and/or system certifications;

(f) the anticipated date the generating facility will be operational;

(g) evidence of site control; and/or

(h) other information that the utility deems is necessary to conduct an evaluation as to whether a generating facility can be safely and reliably connected to the public utility in compliance with this interconnection rule.

(4) Each interconnect request submitted to a public utility must be accompanied by the required processing fee.

(5) An interconnection customer shall retain its original queue position for an interconnection request if the applicant resubmits its application at a higher level of review within 30 business days of a utility's denial of the application at a lower level of review.

(6) A public utility shall not be responsible for the cost of determining the rating of equipment owned or proposed by an interconnection customer or of equipment owned by other local customers.

(7) Any modification to machine data or equipment configuration or to the interconnection site of the generating facility not agreed to in writing by the public utility and the interconnection customer may be deemed a withdrawal of the interconnection request and may require submission of a new interconnection request unless proper notification to each party by the other and a reasonable time to cure the problems created by the changes are undertaken.

(8) Each party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without prior written authorization from the party providing that information, except to fulfill obligations under this rule, or to fulfill legal or regulatory requirements. Each party shall employ at least the same standard of care to protect confidential information obtained from the other party as it employs to protect its own confidential information.

R746-312-7. Level 1 and Level 2 Interconnection Review Screens.

(1) The public utility shall perform its review of Level 1 and Level 2 interconnection requests using the screens set forth below as applicable.

(a) A generating facility's point of common coupling must be on a portion of the public utility's distribution system that is under the interconnection jurisdiction of the commission and not be on a transmission line.

(b) For interconnection of a proposed generating facility to a radial distribution circuit, the aggregate generation on the distribution circuit, including the proposed generating facility, must not exceed 15 percent of the distribution circuit's total highest annual peak load, as measured at the substation. For the purposes of this subsection, annual peak load will be based on measurements taken over the 60 months previous to the submittal of the application, measured for the circuit at the nearest applicable substation.

(c) The proposed generating facility, in aggregation with other generation on the distribution circuit to which the proposed generating facility will interconnect, must not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary)level nearest the proposed point of common coupling.

(d) If the proposed generating facility is to be connected to a single-phase shared secondary, the aggregate generation capacity connected to the shared secondary, including the proposed generating facility, must not exceed 20 kilowatts.

(e) If a proposed single-phase generating facility is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the proposed generating facility must not create a current imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

(f) No construction of facilities by the public utility on its own system shall be required to accommodate the generating facility.

(g) The aggregate generation capacity on the distribution circuit to which the proposed generating facility will interconnect, including the capacity of the proposed generating facility, must not cause any distribution protective equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the electric distribution system, to exceed 90 percent of the short circuit interrupting capability of the equipment. In addition, a proposed generating facility must not be connected to a circuit that already exceeds 90 percent of the circuit's short circuit interrupting capability, prior to interconnection of the facility.

(h) Interconnection Type Screen:

(i) For a proposed generating facility connecting to a three-phase, three wire primary public utility distribution line, a three-phase or single-phase generator must be connected phase-to-phase.

(ii) For a proposed generating facility connecting to three-phase, four wire primary public utility distribution line, a three-phase or single-phase generator must be connected line-to-neutral and must be effectively grounded.

(i) If there are known or posted transient stability limitations to generating units located in the general electrical vicinity of the proposed point of common coupling, including, but not limited to within three or four transmission voltage level busses, the aggregate generation capacity, including the proposed generating facility, connected to the distribution low voltage side of the substation transformer feeding the distribution circuit containing the point of common coupling may not exceed 10 megawatts.

(j) If a proposed generating facility's point of common coupling is on a spot network, the proposed generating facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, must not exceed the smaller of five percent of a spot network's maximum load or 50 kilowatts.

R746-312-8. Level 1 Interconnection Review.

(1) A generating facility that meets the following criteria is eligible for Level 1 interconnection review:

(a) the generating facility is inverter-based; and

(b) the generating facility has a capacity of 25 kilowatts or less.

(2) A public utility shall process, evaluate, and approve, if appropriate, all Level 1 interconnection requests according to this Subsection unless a public utility has implemented a process ensuring notification of approval or denial of a completed Level 1 interconnection request within 15 business days of receipt of the interconnection request, or the public utility completes final approval of a Level 1 interconnection request within 15 business days of receipt of an interconnection request, or the public utility has received approval from the commission for an alternate Level 1 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt, the public utility shall evaluate the interconnection request and notify the interconnection customer whether the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Within 15 business days after issuing a notification of completeness, the public utility shall verify, using screens set forth in Section R746-312-7, whether or not the proposed generating facility can be interconnected safely and reliably, and shall notify the interconnection customer that either:

(i) the generating facility meets all applicable criteria and the interconnection request is approved; or

(ii) the generation facility has failed to meet one or more of the applicable criteria, the reason for the failure, and the interconnection request is denied under the Level 1 interconnection process. If the interconnection request is denied the interconnection customer may resubmit the application under the Level 2 or Level 3 interconnection review procedure, as appropriate.

(e) Either along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility must provide the procedures, requirements, and associated forms, including any required standard form interconnection agreement, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) completion of any required inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement;

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generation facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(f) The customer and the public utility may mutually agree to terms that vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(g) If a public utility does not notify a Level 1 interconnection customer in writing or by electronic mail whether the interconnection request is approved or denied within 25 business days after the receipt of an application, the interconnection request shall be deemed approved.

(3) An interconnection customer must notify the public utility of the anticipated start date for operation of the generating facility at least ten business days prior to starting operation, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(4) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection or witness test, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval indicating the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement with the interconnection customer, the witness test is deemed waived.

(5) Witness Test Not Acceptable. If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 30 business days to resolve any deficiencies. The public utility and interconnection customer may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-9. Level 2 Interconnection Review.

(1) A generating facility that meets the following criteria is eligible for Level 2 interconnection review by a public utility:

(a) the generating facility has a capacity of two megawatts or less; and

(b) the generating facility does not qualify for or fails to meet applicable Level 1 interconnection review procedures.

(2) A public utility must process, evaluate, and approve, if so determined, all Level 2 requests for interconnection according to the following steps unless a public utility has implemented a process ensuring notification of approval or denial of a completed Level 2 interconnection request within 15 business days of receipt of the interconnection request, the public utility completes final approval of a Level 2 interconnection request within 15 business days of receipt of an interconnection request, or the public utility has received approval from the commission for an alternate Level 2 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt of an interconnection request, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt of an interconnection request, the public utility shall evaluate the interconnection request and notify the interconnection customer whether or not the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Within 15 business days after issuing a notification of completeness, the public utility shall verify, using the screens

set forth in Section R746-312-7, whether or not the proposed generating facility can be interconnected safely and reliably, and shall notify the interconnection customer that either:

(i) the generation facility meets all applicable criteria and the interconnection request is approved;

(ii) although the generating facility fails one or more of the screens, the public utility has determined that the generating facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards and the interconnection request is approved; or

(iii) the generation facility has failed to meet one or more of the screens and the reason for the failure(s), the public utility has not or could not determine from the initial reviews that the generating facility may be interconnected consistent with safety, reliability, and power quality standards, or the generating facility cannot be approved without minor modifications at minimal cost and the interconnection request is denied unless the interconnection customer is willing to consider minor modifications or further study.

(e) If the interconnection request is denied, the public utility:

(i) must offer to provide the interconnection customer with the opportunity to attend an optional customer options meeting to be convened within 10 business days of the notification of denial to discuss the options available under Subsection R746-312-9(2)(e)(ii).

(A) During the customer options meeting the public utility shall review possible interconnection customer facility modification or screen analysis and related results to determine what further steps are needed to permit the generating facility to be connected safely and reliably.

(ii) shall either at the time of the notification specified in Subsection R746-312-9(2)(d)(iii), or at the customer options meeting:

(A) offer to complete minor modifications to the public utility's distribution system and provide a non-binding good faith estimate of the cost and time-frame to make such modifications. If the interconnection customer agrees to such modifications, the interconnection customer shall agree in writing within 15 business days of the offer and submit payment for the estimated costs. The interconnection customer must pay any cost that exceeds the estimated costs within 30 calendar days of receipt of the invoice. If the costs to complete the modifications are less than the estimated costs, the public utility shall return such excess within 30 calendar days of the issuance of the invoice without interest;

(B) offer to perform a supplemental review in accordance with Subsection R746-312-9(3) if the public utility concludes that the supplemental review might determine that the generating facility could continue to qualify for interconnection pursuant to the Level 2 process, and provide a non-binding good faith estimate of the costs of such review; or

(C) obtain the interconnection customer's agreement to continue evaluating the interconnection request under the Level 3 process.

(f) Either along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility shall provide the procedures, requirements, and associated forms, including any required standard form interconnection agreement, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) an inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement;

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generation facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(g) The customer and the public utility may mutually agree to terms that vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(3) Supplemental Review:

(a) If the interconnection customer agrees to a supplemental review, the interconnection customer shall agree in writing within 15 business days of the offer, and submit a deposit of the estimated costs. The interconnection customer must pay any supplemental review costs that exceed the deposit within 30 calendar days of receipt of the invoice but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such review. If the deposit exceeds the invoiced costs, the public utility shall return such excess within 30 calendar days of the invoice without interest.

(b) Within 10 business days following receipt of the deposit for supplemental review, the public utility must determine whether the generating facility can or cannot be interconnected safely and reliably and shall notify the interconnection customer that either:

(i) the generation facility can be safely and reliably interconnected, and the interconnection request is approved and the public utility shall proceed according to Subsection R746-312-9(2)(f);

(ii) interconnection customer facility modifications are required to allow the generating facility to be interconnected consistent with safety, reliability and power quality standards. Upon receipt of written confirmation that the interconnection customer agrees to make the necessary changes at the interconnection customer's expense, the public utility shall approve the interconnection request and proceed according to Subsection R746-312-9(2)(f);

(iii) minor modification to the public utility's distribution system are required to allow the generating facility to be interconnected consistent with safety, reliability and power quality standards. After confirmation that the interconnection customer agrees to pay the costs of such system modifications prior to interconnection, the public utility shall approve the interconnection request and proceed according to Subsection R746-312-9(2)(f);

(iv) the results of the supplemental review have not concluded that the generating facility can be interconnected consistent with safety, reliability, and power quality standards and, upon agreement by the interconnection customer, the interconnection request will continue to be evaluated under the Level 3 interconnection review process.

(4) An interconnection customer must notify the public utility of the anticipated testing and inspection date for the generating facility at least ten business days prior to testing, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(5) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval and that the generating facility is authorized/approved for parallel operation. If the public utility

does not conduct the witness test within 10 business days or by mutual agreement of the public utility and the interconnection customer, the witness test is deemed waived.

(6) If an application for Level 2 interconnection review is denied because it does not meet one or more of the requirements in this section, the applicant may resubmit the application under the Level 3 interconnection review procedure.

(7) Witness Test Not Acceptable. If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 45 business days to resolve any deficiencies. The public utility and the interconnection customer may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-10. Level 3 Interconnection Review.

(1) A generating facility that meets the following criteria is eligible for Level 3 interconnection review:

(a) the generating facility has a capacity of greater than two megawatts but no larger than 20 megawatts;

(b) the generating facility is not certified; or

(c) the generating facility does not qualify for or failed to meet Level 1 or Level 2 interconnection review requirements.

(2) A public utility must process, evaluate, and approve, if appropriate, all Level 3 requests for interconnection according to the following steps unless the public utility has received approval from the commission for an alternate Level 3 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt of an interconnection request, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt of an interconnection request, the public utility shall evaluate the interconnection request and notify the interconnection customer whether or not the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business-day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Scoping Meeting. If requested, a scoping meeting shall be held as follows within 10 business days after the interconnection request is deemed complete, or as otherwise mutually agreed to by the parties:

(i) The public utility and the interconnection customer shall bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting;

(ii) The purpose of the scoping meeting is to:

(A) discuss the interconnection request and review existing studies relevant to the interconnection request; and

(B) discuss whether the public utility should perform a feasibility study or proceed directly to a system impact study, a facilities study, or an interconnection agreement;

(iii) Scoping meeting follow-up:

(A) If the parties agree that a feasibility study should be performed, the public utility shall provide the interconnection customer as soon as possible, but no later than five business days after the scoping meeting, a feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(B) If the parties agree not to perform a feasibility study but rather proceed directly to the system impact study, the public utility shall, no later than five business days after the scoping meeting, provide the interconnection customer with a system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(iv) The scoping meeting may be omitted by mutual agreement. If the scoping meeting is omitted, the public utility, if requested by the interconnection customer, must provide information pertinent to the interconnection request, such as the available fault current at the proposed interconnection location, the peak loading on the lines in the general vicinity of the generating facility, and the configuration of the distribution lines at the proposed point of common coupling, within 10 business days after the interconnection request is deemed complete.

(e) Feasibility Study. A feasibility study shall provide a preliminary evaluation of the system impact that would result from interconnecting the generating facility and the cost of interconnecting the generating facility to the public utility's electric distribution system and shall be completed as follows:

(i) For interconnection customers opting to forego a scoping meeting and proceeding directly to the feasibility study, the public utility shall provide the interconnection customer, as soon as possible but no later than 10 business days after receipt of a completed application, a standard form feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(ii) In order to remain in consideration for interconnection, an interconnection customer who has requested or requires a feasibility study, either as part of or independent of a scoping meeting, must return the executed feasibility study agreement within 30 business days of receipt. A deposit of the lesser of 50 percent of the good faith estimate or earnest money of $1,000 may be required from the interconnection customer.

(iii) Within 30 business days of receipt of an executed study agreement and payment of any required deposit, the public utility shall conduct the feasibility study and notify the interconnection customer either:

(A) the feasibility study shows no potential for adverse system impacts, no facilities are required, and the interconnection request is approved, in which case the public utility shall send the interconnection customer an executable interconnection agreement within five business days;

(B) the feasibility study shows no potential for adverse system impacts however additional facilities may be required and the review process shall proceed to a facilities study. When proceeding to a facilities study, the public utility shall provide the interconnection customer a standard form facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study within five business days; or

(C) the feasibility study shows the potential for adverse system impacts, and the review process shall proceed to a system impact study. When proceeding to a system impact study, the public utility shall provide the interconnection customer with a standard form system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study within 15 business days of transmittal of the feasibility study report.

(iv) Any study fees will be invoiced to the interconnection customer after the feasibility study is completed and delivered

and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(f) System Impact Study. Any required system impact study (or studies) must be conducted in accordance with good utility practice and shall be completed as follows:

(i) The system impact study shall:

(A) provide details on the impacts to the electric distribution system that would result if the generating facility were interconnected without modifications to either the generating facility or to the electric distribution system;

(B) identify any modifications to the public utility's electric distribution system necessary to accommodate the proposed interconnection;

(D) focus on power flows and utility protective devices, including control requirements; and

(E) include the following elements, as applicable:

(I) a load flow study;

(II) a short-circuit study;

(III) a circuit protection and coordination study;

(IV) the impact on the operation of the electric distribution system;

(V) a stability study, along with the conditions that would justify including this element in the impact study;

(VI) a voltage collapse study, along with the conditions that would justify including this element in the impact study; and

(VII) additional elements, if justified by the public utility and approved in writing by the public utility and the interconnection customer prior to the impact study.

(ii) In order to remain in consideration for interconnection, an interconnection customer who has requested a system impact study, either as part of or independent of a scoping meeting or feasibility study, must return the executed impact study agreement(s) within 30 business days of receipt of the agreement. A deposit of the good faith estimated costs for each system impact study may be required from the interconnection customer.

(iii) After the applicant executes the system impact study agreement and pays any required deposit, the public utility shall complete the impact study and distribute the results to the interconnection customer within 30 business days or 45 business days for transmission impact studies, notifying the interconnection customer either:

(A) Only minor modifications to the public utility's electric distribution and/or transmission system are necessary to accommodate interconnection. In such a case, the public utility must:

(I) provide to the interconnection customer at the same time the detail of the scope of the necessary modifications, a non-binding, good faith estimate of their cost, and an executable interconnection agreement; and

(II) approve the interconnection request upon receipt from the interconnection customer the executed interconnection agreement.

(B) Modifications to the public utility's electric distribution system and/or transmission system are necessary to accommodate the proposed interconnection in which case the public utility must provide at the same time either:

(I) a non-binding, good faith estimate of the cost of the modifications, if known, and

(II) a standard form facilities study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the facilities study.

(iv) If the proposed interconnection may affect electric transmission or delivery systems other than those controlled by the public utility, operators of those other systems may require additional studies to determine the potential impact of the interconnection on those systems. If such additional studies are required, the public utility must coordinate the studies but will not be responsible for their timing. The applicant shall be responsible for the costs of any such additional studies required by another affected system. Such studies will be conducted only after the applicant has provided written authorization.

(v) Any study fees will be invoiced to the interconnection customer after the system impact study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(g) Facilities Study. The results of the facilities study shall specify a non-binding good faith cost estimate of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusion of the system impact study (or studies) in order for the interconnection customer to safely interconnect the generating facility with the public utility's electric distribution system and the time required to build and install those facilities. The following provisions apply to the facilities study:

(i) A public utility may require a deposit of the good faith estimated costs for the facilities study.

(ii) In order to remain under consideration for interconnection, the interconnection customer must return the executed facilities study agreement and any required deposit, or request an extension of time, within 30 business days.

(iii) Design for any required interconnection facilities and/or upgrades shall be performed under the facilities study agreement. The public utility may contract with consultants to perform activities required under the facilities study agreement. The interconnection customer and the public utility may agree to allow the interconnection customer to separately arrange for the design of some of the interconnection facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the public utility under the provisions of the facilities study agreement. If the parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the public utility shall make sufficient information available to the interconnection customer in accordance with confidentiality and critical infrastructure requirements to permit the interconnection customer to obtain an independent design and cost estimate for any necessary facilities.

(iv) In cases where upgrades are required, the facilities study must be completed and the facilities study report transmitted to the interconnection customer's within 45 business days of the public utilities receipt of the facilities study agreement from the interconnection customer. In cases where no upgrades are necessary, and the required facilities are limited to interconnection facilities, the facilities study must be completed and the facilities study report transmitted to the interconnection customer in 30 business days of the public utilities receipt of the facilities study agreement from the interconnection customer. The report and any ensuing interconnection agreement must list the conditions and facilities necessary for the generating facility to safely interconnect with the public utility's electric distribution system, and must include a non-binding, good faith estimate of the cost of those facilities

and the estimated time required to build and install those facilities.

(v) Upon completion of the facilities study and receipt of agreement of the interconnection customer to pay for interconnection facilities and upgrades identified in the facilities study, the public utility shall approve the interconnection request.

(vi) Any study fees will be invoiced to the interconnection customer after the facilities study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(h) Either prior to, along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility must provide the procedures, requirements, and associated forms, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) completion of any required inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement.

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generating facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(i) The customer and the public utility may mutually agree to terms that vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(3) An interconnection customer must notify the public utility of the anticipated testing and inspection date of the generating facility at least ten business days prior to testing, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(4) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection or witness test, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval and that the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement of the parties, the witness test is deemed waived.

(5) Witness Test Not Acceptable: If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 60 business days to resolve any deficiencies. The parties may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-11. Interconnection Metering.

(1) Metering: For generating facilities not subject to the provisions of Section 54-15, the interconnection customer shall be responsible for the cost of the purchase and installation of any special metering and data acquisition equipment deemed necessary by the terms of the interconnection agreement unless the public utility determines otherwise. The public utility must install, maintain and operate the metering equipment. The parties must mutually grant unrestricted access to such equipment as may be necessary for the purposes of conducting routine business.

(2) For generating facilities subject to the provisions of Section 54-15, metering equipment and costs for such metering equipment shall be determined as specified in Section 54-15-103. The public utility must install, maintain and operate the metering equipment. The parties must mutually grant unrestricted access to such equipment as may be necessary for the purposes of conducting routine business.

R746-312-12. Interconnection Monitoring.

(1) Generating facilities approved and interconnected to the public utility under the Level 1 and Level 2 interconnection review processes, and generating facilities with nameplate capacities of 3 megawatts or less approved under the Level 3 interconnection review process, except as noted herein, are not required to provide for remote monitoring of the electric output by the public utilities.

(2) Generating facilities approved under Level 3 Interconnection Applications with Electric Nameplate Capacities greater than 5 MW or Level 3 Interconnection Applications where the aggregated generation on the circuit, including the interconnection customers generating facility, would exceed 50 percent of the line section annual peak load may be required to provide remote monitoring at the public utility's discretion if the public utility has required such monitoring of its own facilities.

(3) If a public utility determines monitoring data provided by telemetry is necessary for safe, reliable and efficient operations of a proposed generating facility with an electric nameplate capacity of greater than 3 megawatts to 5 megawatts, the public utility may petition the commission on a case by case basis to impose monitoring and telemetry requirements such facilities. Any such petition must be accompanied by evidence supporting telemetry needs and requirements.

(4) For generating facilities required to provide remote monitoring pursuant to Subsections R746-312-12(2) and (3), the data acquisition and transmission to a point where it can be used by the public utility's control system operations must meet the performance based standards as follows:

(a) Any data acquisition and telemetry equipment required by this rule must be installed, operated and maintained at the interconnection customer's expense.

(b) Telemetry requirements:

(i) parties may mutually agree to waive or modify any of the telemetry requirements contained herein.

(ii) the communication must take place via a Private Network Link using a Frame Relay or Fractional T-1 line or other such suitable device. Dedicated Remote Terminal Units, from the generating facility to the public utility's substation and Energy Management System are not required.

(iii) a single communication circuit from the generating facility to the public utility is sufficient.

(iv) communications protocol must be DNP 3.0 or other standard used by the public utility.

(v) the generating facility must be capable of sending telemetric monitoring data to the public utility at a minimum rate of every 2 seconds (from the output of the generating

facility's telemetry equipment to the public utility's energy management system).

(vi) the minimum data points that a generator facility is required to provide telemetric monitoring to the public utility are:

(A) net real power flowing out or into the generating facility (analog);

(B) net reactive power flowing out or into the generating facility (analog);

(C) bus bar voltage at the point of common coupling (analog);

(D) data processing gateway (DPG) heartbeat (used to certify the telemetric signal quality); and

(E) on-line or off-line status (digital).

(vii) If an interconnection customer operates the equipment associated with the high voltage switchyard interconnecting the generating facility to the public utility's distribution system, and is required by to provide monitoring and telemetry, the interconnection customer must provide the following monitoring to the public utility in addition to provisions in Subsection R746-312-12(4)(b)(vi):

(A) switchyard line and transformer MW and MVAR values;

(B) switchyard bus voltage; and

(C) switching devices status

R746-312-13. Interconnection Fees and Charges.

(1) For Level 1 interconnection review:

(a) A public utility whose rates are determined by the commission may not charge an application, or other fee, to an applicant that requests Level 1 interconnection review. However, if an application for Level 1 interconnection review is denied because it does not meet the requirements for Level 1 interconnection review, and the applicant resubmits the application under the Level 2 or Level 3 review procedure, the public utility may impose a fee for the resubmitted application, consistent with this section.

(b) All other public utilities may determine reasonable fees or charges for interconnection, however for those interconnections that fall under the provisions of Section 54-15, the fees must be determined in accordance with Section 54-15-105.

(2) For a Level 2 interconnection review:

(a) A public utility whose rates are determined by the commission may charge fees of up to $50.00 plus $1.00 per kilowatt of the generating facility's capacity to cover the costs of the interconnection request review, plus the reasonable cost of any required minor modifications to the electric distribution system or additional reviews. Costs for such minor modifications or additional review will be based on the public utility's non-binding, good faith estimates and the ultimate actual installed costs. Costs for engineering work done as part of any additional review or studies shall not exceed $100.00 per hour. A public utility may adjust the $100.00 hourly rate once each year to account for inflation and deflation.

(3) For a Level 3 interconnection review:

(a) A public utility whose rates are determined by the commission may charge fees of up to $100.00 plus $2.00 per kilowatt of the generating facility's capacity, as well as charges for actual time spent on any required impact or facilities studies. Costs for engineering work done as part of a feasibility, impact, or facilities study shall not exceed $100.00 per hour. A public utility may adjust the $100.00 hourly rate once each year to account for inflation and deflation as measured by the 12 months unadjusted Consumer Price Index for all items calculated for December of the previous year. If the public utility must install facilities in order to accommodate the interconnection of the generating facility, the cost of such facilities shall be the responsibility of the applicant.

R746-312-14. Requirements After Interconnection Approval.

(1) A public utility may not require an applicant whose facility meets the criteria for interconnection approval under the Level 1 or Level 2 interconnection review procedures to perform or pay for additional tests, except if agreed to by the applicant. In addition, a public utility may not require an interconnection customer whose net metering generating facility is in compliance with Section 54-15-106 to perform or pay for additional tests.

(2) A public utility may not charge any fee or other charge for connecting to the public utility's distribution system or for operation and maintenance of a generating facility for the purposes of generating electricity, except for the fees provided for under this interconnection rule and approved standard form agreements or determined by the governing authority.

(3) Once an interconnection has been approved under this interconnection rule, the public utility may not require an interconnection customer to test or perform maintenance on its facility except for the following and subject to the provision of Section 54-15-106:

(a) any manufacturer-required testing or maintenance;

(b) any post-installation testing necessary to ensure compliance with IEEE standards or to ensure safety;

(c) the interconnection customer replaces a major equipment component that is different from the originally installed model; and/or

(d) an annual test to be performed at the discretion of and paid for by the public utility in which the generating facility is disconnected from the public utility's equipment to ensure the inverter stops delivering power to the grid.

(4) When an approved generating facility undergoes maintenance or testing in accordance with the requirements of this interconnection rule, the interconnection customer must retain written records for three years documenting the maintenance and the results of testing.

(5) A public utility has the right to inspect an interconnection customer's facility after interconnection approval is granted, at reasonable hours and with reasonable prior notice to the interconnection customer. If the public utility discovers that the generating facility is not in compliance with the requirements of this interconnection rule or executed agreements, the public utility may require the interconnection customer to disconnect the generating facility until compliance is achieved.

(6) Subsequent to becoming interconnected to a public utility the interconnection customer must notify the public utility of all proposed modifications to the generating facility or equipment package pursuant to Subsection R746-312-4(6).

R746-312-15. Aggregation of Meters for Net Metering Interconnection.

(1) For the purpose of measuring electricity usage under the net metering program, a public utility must, upon request from an interconnection customer, aggregate for billing purposes a meter to which the net metering facility is physically attached (the designated meter) with one or more meters (the additional meter) in the manner set out in this section. This rule is applicable only when:

(a) the additional meter is located on or adjacent to the premises of the electrical corporation's customer, subject to the electrical corporation's service requirements;

(b) the additional meter is used to measure only electricity used for the interconnection customer's requirements;

(c) the designated meter and the additional meter are subject to the same rate schedule; and

(d) the designated meter and the additional meter are served by the same primary feeder.

(2) An interconnection customer must give at least 30

business days notice to the utility to request that additional meters be included in meter aggregation. The specific meters must be identified at the time of such request. In the event that more than one additional meter is identified, the interconnection customer must designate the ranking order for the additional meters to which net metering credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, are to be applied.

(3) The aggregation of meters will apply only to charges that use kilowatt-hours as the billing determinant. All other charges applicable to each meter account shall be billed to the interconnection customer.

(4) If in a monthly billing period the net metering facility supplies more electricity to the public utility than the energy usage recorded by the interconnection customer's designated meter, the utility will apply credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, to the next monthly bill for the excess kilowatt-hours first to the designated meter, then to additional meters that are on the same rate schedule as the designated meter.

(5) If an additional meter changes service to a rate schedule that is different than the designated meter, the additional meter is not eligible for net metering credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, for the remainder of the billing year and until such time as the additional meter receives service on the same rate schedule as the designated meter.

(6) If the designated meter changes service to a different rate schedule, aggregation of net metering credits is not allowed for the remainder of the billing year and may not occur until such time as the additional meters receive service on the same rate schedule as the designated meter.

(7) With the governing authority's prior approval pursuant to Section 54-15-105, a public utility may charge the interconnection customer requesting to aggregate meters a reasonable fee to cover the administrative costs of this provision.

R746-312-16. Public Utility Maps, Records and Reports.

(1) Each public utility shall maintain current records of interconnection customer generating facilities showing size, location, generator type, and date of interconnection authorization.

(2) By July 1 of each year, the public utility shall submit to the commission an annual report with the following summary information for the previous calendar year:

(a) the total number of generating facilities approved and their associated attributes including resource type, generating capacity, and zip code of generating facility location,

(b) the total rated generating capacity of generating facilities by resource type,

(c) for net metering interconnections, the total net excess generation kilowatt-hours received from interconnection customers by month,

(d) for net metering interconnections, the total amount of excess generation credits in kilowatt hours, and their associated dollar value that have expired at the end of each annualized billing period.

R746-312-17. Interconnection-related Agreements.

(1) Contents of Standard Interconnection Agreement. All standard form interconnection agreements shall, at a minimum, contain the following:

(a) a requirement that the generating facility must be inspected by a local building code official prior to its operation in parallel with the public utility to ensure compliance with applicable local codes.

(b) provisions that permit the public utility to inspect interconnection customer's generating facility and its component equipment, and the documents necessary to ensure compliance with this rule. The customer shall notify the public utility as required by this rule prior to initially placing customer equipment and protective apparatus in service, and the public utility shall have the right to have personnel present on the in-service date. If the generating system is subsequently modified in order to increase its gross power rating, the customer must notify the public utility by submitting a new application specifying the modifications in accordance with the level of review required for the application.

(c) a provision that the customer is responsible for protecting the generating equipment, inverters, protective devices, and other system components from damage from the normal and abnormal conditions and operations that occur on the public utility system in delivering and restoring power; and is responsible for ensuring that the generating facility equipment is inspected, maintained, and tested in accordance with the manufacturer's instructions to ensure that it is operating correctly and safely.

(d) a provision that the customer shall hold harmless and indemnify the public utility for all loss to third parties resulting from the operation of the generating facility, except when the loss occurs due to the negligent actions of the public utility and a provision that the public utility shall hold harmless and indemnify the customer for all loss to third parties resulting from the operation of the public utility's system, except when the loss occurs due to the negligent actions of the customer.

(e) Insurance:

(i) If an interconnection customer whose generating facility is no greater than two megawatts in size complies with the provisions of the interconnection request approval, interconnection agreement, and standards identified in Section 54-15-106, a public utility may not require that interconnection customer to purchase additional liability insurance.

(ii) all other interconnection customers are required to obtain prudent amounts of general liability insurance in an amount sufficient to protect other parties from any loss, cost, claim, injury, liability, or expense, including reasonable attorney fees, relating to or arising from any act or omission in its performance of the provisions of the this rule or the interconnection agreement. Neither party may seek redress from the other party in an amount greater than the amount of direct damage actually incurred. An interconnection customer of sufficient credit-worthiness may propose to self-insure for such liabilities and such proposal shall not be unreasonably rejected.

(f) identification of any fees or charges approved pursuant to this rule or applicable law.

KEY: interconnection, generating equipment, renewable energy facilities, public utilities

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	54-15-106

R746. Public Service Commission, Administration.
R746-348. Interconnection.
R746-348-1. Applicability.

These rules apply to each certified telecommunications corporation that provides local exchange service in Utah.

R746-348-2. Definitions.

A. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined in Section 54-8b-2 or these rules. As used in these rules, unless context states otherwise, the following definitions shall apply:

1. "Collocation" --

a. Physical collocation is an offering by an incumbent local exchange carrier that enables a requesting telecommunications corporation to:

i. place its own equipment to be used for interconnection or access to unbundled network elements within or upon an incumbent local exchange carrier's premises;

ii. use the equipment to interconnect with an incumbent local exchange carrier's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or to gain access to an incumbent local exchange carrier's unbundled network elements for the provision of a telecommunications service;

iii. enter those premises, subject to reasonable terms and conditions, to install, maintain and repair equipment necessary for interconnection or access to unbundled elements; and

iv. obtain reasonable amounts of space in an incumbent local exchange carrier's premises, for the equipment necessary for interconnection or access to unbundled elements, allocated on a first-come, first-served basis entrants who are ready and able to use the entire space they receive within a reasonable time.

b. Virtual collocation is an offering by an incumbent local exchange carrier that enables a requesting telecommunications corporation to:

i. Designate or specify equipment to be used for interconnection or access to unbundled network elements to be located within or upon an incumbent local exchange carrier's premises, and dedicated to that telecommunications carrier's use;

ii. use that equipment to interconnect with an incumbent local exchange carrier's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or for access to an incumbent local exchange carrier's unbundled network elements for the provision of a telecommunications service; and

iii. Electronically monitor and control its communications channels terminating in that equipment.

2. "Common Transport Links" -- means shared transmission facilities between two switching systems where traffic originating with or terminating to multiple telecommunication service providers is comingled. These facilities normally exist between end offices and a tandem switch.

3. "Dedicated Transport Links" -- means transmission facilities between two switching systems where traffic originates with or terminates to the same or another public telecommunications service provider.

4. "Incumbent Local Exchange Carrier" -- means the local exchange carrier that on February 8, 1996, provided telephone exchange service in a defined geographic service territory, and on that date was a member of the Exchange Carrier Association pursuant to 47 CFR 69.601(b), or is a person that became a successor or assign of a member of the Exchange Carrier Association.

5. "Interconnection" -- means the linking of two networks for the mutual exchange of traffic. It does not include the transport and termination of traffic.

6. "Local Number Portability" -- means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without unreasonable impairment of quality, reliability, or convenience when switching from one telecommunications corporation to another.

7. "Loop Concentration" -- means the function performed by electronic equipment that provides for the multiplexing or demultiplexing of a quantity of loops into a different number of digital or optical communication channels that connect to another network element.

8. "Loop Distribution" -- means transmission facilities from the termination of the feeder or loop concentration facility to the customer's network interface.

9. "Loop Feeder" -- means transmission facilities between a central office and the distribution cable or a loop concentration facility.

10. "Network Elements" -- means the features, functions, and capabilities of network facilities and equipment used to transmit, route, bill or otherwise provide public telecommunications services.

11. "Network Interface Device" -- means the cross connect device used to connect loop facilities to intra-premises cabling or inside wiring.

12. "Operator Systems" -- means systems used to provide live or mechanized operator functions to assist end users with call completion, call assistance, and directory assistance.

13. "Operational Support" -- means the processing of local exchange customer service and repair orders, and the electronic exchange of billing, customer account, service provisioning and service administration data among local exchange service providers.

14. "Premises" -- shall carry the same definition as prescribed in 47 CFR 51.5.

15. "Service Control Point" -- means a database in the signaling network where queries for call processing instructions are directed.

16. "Signaling Links" -- means transmission facilities in a signaling network which carry any out-of-band signaling channels from and between the various elements of a signaling network.

17. "Signal Transfer Point" -- means a packet switch that acts as a routing hub for a signaling network and transfers messages between various points in and among signaling networks.

18. "Switch" -- means a facility required to connect lines or trunks to a communications transmission path.

19. "Tandem Switch" -- means a facility that connects trunks to trunks in order to complete inter-switch calls.

20. "Unbundling" means the disaggregation of facilities and functions into multiple network elements and services that can be individually purchased by a competing public telecommunications service provider.

R746-348-3. Terms and Conditions of Facilities Interconnection.

A. Points of Interconnection -- Incumbent local exchange carriers shall allow any other public telecommunication service provider to interconnect its network at any technically feasible point, to provide transmission and routing of public telecommunication services.

1. A local exchange service provider requesting interconnection with an incumbent local exchange carrier shall identify a desired point of interconnection.

B. Joint Facilities Construction and Use -- In furtherance of efficient interconnection contemplated by Sections 54-4-8 and 54-4-12, public telecommunication service providers may jointly construct interconnection facilities and apportion the cost and expense between any joint users of the facility.

1. The incumbent local exchange carrier and the requesting

local exchange service provider shall negotiate meet points for interconnection. Each party shall be responsible for the costs of constructing its facilities to the meet point, and neither party may impose a meet point that would require that one party incur significantly greater construction costs to build to the meet point than the other party.

C. Types of Line Connection -- The requesting local exchange provider shall choose either DS-3, DS-1, or DS-0 connections or other technically feasible interconnection interfaces and protocols including loops conditioned to provide digital subscriber line services.

D. Collocation Rate Elements -- Physical and virtual collocation shall be offered under terms and conditions that are just, reasonable, and nondiscriminatory.

R746-348-4. Reciprocity.

A. Compliance -- Interconnection of the facilities of public telecommunications service providers shall be fully reciprocal, shall not be unreasonably delayed or withheld and shall fully comply with Subsection 54-8b-2.2(1)(b) and 47 USC Sections 224, 251, 252, 256 and Subsection 271(c).

B. Written Acknowledgment -- Each local exchange service provider shall provide written acknowledgment, within five business days, of receipt of a written request by another local exchange service provider for interconnection facilities and services.

C. Time Limit -- Incumbent local exchange carriers and other terminating local exchange service providers shall provide interconnection facilities and services within 60 days following receipt of a written request unless the Commission extends the time.

R746-348-5. Construction and Maintenance.

A. Responsibility -- Each local exchange service provider shall be responsible for construction and maintenance of facilities on its side of the point of interconnection, unless two or more providers mutually agree to another arrangement.

B. Standards -- Each local exchange service provider shall construct and maintain its facilities at the point of interconnection in accordance with accepted engineering standards and practices in the exchange carrier industry.

1. Each terminating provider will make available to each originating provider any documents and technical references issued by industry standards bodies or equipment manufacturers which define the engineering specifications necessary for the originating provider's equipment to interface with the terminating provider's essential interconnection facilities.

2. No local exchange service provider shall construct or maintain facilities on its side of the point of interconnection in a manner contrary to 47 USC Section 256, or in a manner that is lower in quality than that which it provides itself, its affiliates, or another local exchange service provider.

R746-348-6. Ancillary Features and Functions.

A. Compliance -- Incumbent local exchange carriers shall make available to other local exchange service providers the following network features and functions pursuant to 47 USC Section 251 and Subsection 54-8b-2.2.

1. Access to signaling protocols and elements of signaling protocols used to route local and interexchange traffic, including access to signaling links, signal transfer points, and service control points through the incumbent local exchange carrier's signal transfer point.

2. Answer and disconnect supervision as well as the information necessary for customer billing.

a. Telecommunications corporations shall protect customer proprietary network information in compliance with 47 USC Section 222 and applicable federal and state rules.

b. Telecommunications corporations shall enter into billing and collection agreements to permit exchange of telephone line number information, use of non-proprietary calling cards, and collect billing of third-party calls to a number served by another provider.

3. Local exchange service providers shall provide the capability for operators on interconnected networks to perform functions such as completing collect calls, third party calls, busy line verification calls, and busy line interrupt.

4. Local exchange service providers shall develop and implement repair service referral procedures to direct trouble reports to the correct provider.

5. Pursuant to contract or tariff, each local exchange service provider shall offer electronic interfaces to operational support systems to enable other certified local exchange service providers to provide service quality equal to that required by the Commission for incumbent local exchange carriers. These contracts or tariffs shall be approved by the Commission and available for public review.

6. Local exchange service providers shall provide nondiscriminatory access to subscriber information, such as that contained in published "White Pages" telephone directories.

a. Customers of local exchange service providers shall receive directories as part of basic local exchange service.

b. An incumbent local exchange service provider, or its affiliate, shall make available to a new local exchange service provider adequate space in the Customer Guide pages of the directory to allow a new local exchange service provider to provide its customers and prospective customers with information reasonably similar to that provided by an incumbent local exchange service provider for its customers.

B. Emergency Call Networks -- Each local exchange service provider will cooperate to insure the seamless operation of emergency call networks, including 911, E-911 and 0- calls.

1. Incumbent local exchange carriers will permit other local exchange service providers to interconnect at its E-911 tandem so that each local exchange service provider's customers may place calls to public safety answering points by dialing 911.

2. Local exchange service providers shall not charge each other for any service, activity or facility associated with provision of 911 or E-911 services other than call transport and termination charges.

R746-348-7. Essential Facilities and Services.

A. Designation -- At a minimum, the following are considered to be essential facilities or services pursuant to 54-8b-2. 2.:

1. Unbundled local loops including 2-wire, 4-wire and digital subscriber line facilities;

2. Loop concentration, loop distribution and loop feeder facilities;

3. Network interface devices;

4. Switching capability including line-side facilities, trunk-side facilities and tandem facilities;

5. 911 and E911 emergency call networks;

6. Access to numbering resources;

7. Local telephone number portability;

8. Inter-office transmission facilities;

9. Signaling networks and call-related databases including signaling links, signaling transfer points and databases used for billing and collection, and transmission and routing of public telecommunications services;

10. Operations support systems used to pre-order, order, provision, maintain and repair unbundled network elements, or services purchased for resale from an incumbent local exchange carrier by another telecommunications corporation;

11. Billing functions;

12. Operator services and directory assistance;

13. Physical and virtual collocation and,

14. Intra-premises cabling and inside wiring owned or

controlled by an incumbent local exchange carrier.

B. Determination of Essential Nature -- A telecommunications corporation may request any essential network facility or service from another telecommunications corporation and that telecommunications corporation shall timely provide the network facility or service in accordance R746-348-4 unless it demonstrates that providing that facility or service is technically infeasible.

1. A person may petition the Commission for a finding that a facility or service is essential or should no longer be deemed essential.

KEY: interconnection, network interconnection, telecommunications, telephone utility regulation

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R765. Regents (Board of), Administration.
R765-431. State Authorization Reciprocity Agreement Rule.
R765-431-1. Purpose.

To administer a state authorization reciprocity agreement as authorized by Section 53B-16-109.

R765-431-2. Definitions.

In addition to the definitions set forth in Section 53B-16-109(1), the following definitions shall apply to this Rule.

(1) "OCHE" shall mean the Office of the Commissioner of Higher Education.

(2) "NC-SARA" shall mean the National Council for State Authorization Reciprocity Agreements.

(3) "SARA" shall mean the State Authorization Reciprocity Agreement overseen by NC-SARA and administered by four regional higher education compacts, including WICHE.

(4) "SARA portal agency" shall mean the single agency designated by each SARA member state to serve as the interstate point of contact for SARA questions, complaints, and other communications.

(5) "WICHE" shall mean the Western Interstate Commission for Higher Education.

R765-431-3. Applications for Institutional Participation in SARA.

(1) Institutions desiring to participate in SARA shall submit to OCHE the following:

(a) A completed Application and Approval Form for Institutional Participation in SARA that is approved by NC-SARA;

(b) Payment of the fee established by OCHE for administering SARA; and

(c) The following documents verifying the statements made in the application:

(i) Evidence supporting Institution's statement that its principal campus or central administrative unit is located in Utah and that it is authorized to operate in Utah;

(ii) Evidence supporting Institution's statement that it is a degree-granting institution that is accredited by an accrediting body recognized by the U.S. Secretary of Education;

(iii) Evidence showing (1) students are informed, before completing the enrollment process for an online course or program, of the student consumer complaint processes available to them, and (2) the student complaint processes are clearly defined and can be used electronically;

(iv) Evidence showing students are informed, before completing the enrollment process for an online course or program that customarily leads to professional licensure, whether or not the course or program meets licensure requirements in the state where the student resides or, if unknown, students are provided the contact information for the appropriate state licensing board(s); and

(v) For non-public Institutions, evidence of Institution's financial responsibility index score from the Department of Education that is 1.5 or above, or if its score is between 1.0 and 1.5, evidence that Institution has obtained the surety required in R765-431-4. Non-public Institutions with a score below 1.0 will not be eligible to participate in SARA.

(2) Institutions desiring to continue participating in SARA after one year of the initial application shall submit to OCHE annually thereafter the following:

(a) A completed Renewal Application for Institutional Participation in SARA that is approved by NC-SARA within 30 days of receipt of notice for opportunity to renew from NC-SARA;

(b) Payment of the fee established by OCHE for administering SARA; and

(c) The following documents verifying the statements made in the application:

(i) Evidence that Institution's principal campus or central administrative unit remains located in Utah and that Institution continues to be authorized to operate in Utah;

(ii) Evidence that Institution retains its accreditation by an accrediting body recognized by the U.S. Secretary of Education; and

(iii) For non-public Institutions, evidence of Institution's financial responsibility index score from the Department of Education.

(3) OCHE shall notify the Institution no later than 30 days after receipt of the initial or renewal application of its decision to approve, deny, or return the application for further information.

(4) If an Institution's initial or renewal application is denied, OCHE shall provide to the applicant a written reason for the denial.

(5) If any information contained in the initial or renewal application becomes incorrect or incomplete while it is in effect, the Institution shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by OCHE.

R765-431-4. Surety Requirements for Institutions with a Low Financial Responsibility Index Score.

(1) An Institution with a financial responsibility index score from the Department of Education between 1.0 and 1.5 shall satisfy the requirement that it is sufficiently financially stable to participate in SARA by submitting with its application a surety in the form of a bond, certificate of deposit, or irrevocable letter of credit.

(2) The amount of the surety shall be:

(a) $187,500 for Institutions expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the year it is applying to participate in SARA;

(b) $125,000 for Institutions expecting to enroll between 50 and 99 separate individual students during the year it is applying to participate in SARA;

(c) $62,500 for Institutions expecting to enroll less than 50 separate individual students during the year it is applying to participate in SARA; and

(d) $12,500 for an Institution that is able to establish that its gross tuition income from any source during the year it is applying to participate in SARA will be less than $25,000.

(3) The obligation of the surety will be that the Institution, its officers, agents, and employees will:

(a) faithfully perform the terms and conditions of its application to participate in SARA; and

(b) conform to the standards and requirements required for participation in SARA.

(4) The bond, certificate of deposit, or letter of credit shall be in a form approved by OCHE and issued by a company authorized to do such business in Utah.

(5) The bond, certificate of deposit, or letter of credit shall be payable to OCHE to be used to satisfy any costs, losses, or damages resulting from the Institution's failure to meet any of its obligations as a participant in SARA.

(6) The surety company may not be relieved of liability on the surety unless it gives the Institution and OCHE 90 calendar days' notice by certified mail of the company's intent to cancel the surety.

(7) If at any time the company that issued the surety cancels or discontinues the coverage, the Institution's eligibility to participate is SARA is automatically revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained on or before the cancellation date of the original coverage and provided to OCHE.

R765-431-5. Revocation of Eligibility to Participate in SARA.

(1) An Institution's eligibility to participate in SARA may be revoked by OCHE upon its finding that:

(a) the Institution's application contains material representations which are incomplete, improper, or incorrect;

(b) the Institution failed to perform as represented in its applications;

(c) the Institution violated any of the policies and procedures of OCHE as they relate to SARA;

(d) the Institution violated any of the policies and procedures of NC-SARA or any of the four regional compacts administering SARA;

(e) the Institution failed to maintain an adequate financial responsibility index score from the Department of Education;

(f) the Institution has engaged in any dishonest or fraudulent activity; or

(g) the Institution failed to comply with any laws in this state or another state that affect its ability to continue doing business in Utah.

(2) The revocation of the eligibility of an Institution shall be made in accordance with the procedures set forth in UT Admin. R765-134. A hearing is not required.

R765-431-6. Request for Review.

(1) Institutions shall have the right to submit to OCHE a Request for Review regarding a decision to deny the Institution's application or to revoke the Institution's eligibility to participate in SARA.

(2) Requests for Review shall be postmarked within 10 days of date of notification of the adverse decision.

(3) Requests for Review will be reviewed and decided by a review committee appointed by the Commissioner of Higher Education.

(4) At the time the Request for Review is made, the Institution shall provide evidence to the review committee that the adverse decision was made in error.

(5) The decision of the review committee shall be made in accordance with the procedures set forth in UT Admin. R765-134. A hearing is not required.

(6) The decision of the review committee shall be the final institutional action. An Institution may request judicial review of the review committee's decision in accordance with UT Admin. R765-134.

(7) The Institution may also request that WICHE review an adverse decision to see whether the SARA policies and standards were upheld during the review process.

R765-431-7. Consumer Complaints.

(1) Filing Complaints. Before filing a complaint with OCHE against an Institution, an individual must first work through the Institution's complaint process. To file a complaint against an Institution, an individual shall submit to OCHE:

(a) a completed complaint form as provided by OCHE; or

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

(i) all documentary evidence relating to the facts of the complaint;

(ii) evidence of the Institution's resolution of the complaint; and

(iii) contact information for the complainant.

(2) Complaint Resolution. OCHE may refer the complaints it receives to one or more of the following entities for resolution as it deems appropriate:

(a) the Institution complained against;

(b) the SARA portal agency in the home state of a non-Utah Institution complained against; and

(c) the Utah Division of Consumer Protection or other law enforcement agency.

(3) Action to Revoke Based on Consumer Complaint. OCHE may take action, in accordance with UT Admin. R765-431-5, to revoke an Institution's eligibility to participate in SARA based on a consumer complaint that is received within two years of the incident complained of.

KEY: State Authorization Reciprocity Agreement (SARA), NC-SARA
December 12, 2016 53B-16-109

R765. Regents (Board of), Administration.
R765-609. Regents' Scholarship.
R765-609-1. Purpose.

The Regents' Scholarship encourages Utah high school students to prepare for college academically and financially by taking a core course of study in grades 9-12 and saving for college. This statewide scholarship is aligned with the Utah Scholars Core Course of Study which is based on national recommendations as outlined by the State Scholars Initiative. The courses required by the scholarship are proven to help students become college and career ready. In addition, this scholarship encourages high school students to complete meaningful course work through their senior year.

R765-609-2. References.

2.1. Utah Code Ann. Section 53B-8-108 et seq., Regents' Scholarship Program.

2.2. Utah Admin. Code Section R277-700-6, High School Requirements (Effective for graduating students beginning with the 2010-2011 School Year).

2.3. Regents' Policy and Procedures R604, New Century Scholarship.

R765-609-3. Definitions.

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents.

3.2. "Base award" means a one-time scholarship to be awarded to applicants who complete the eligibility requirements of section 4.1 of this policy.

3.3. "Board" means the Utah State Board of Regents.

3.4. "College Course Work" means instance in which college credit is earned, including but limited to, concurrent enrollment, distance education, dual enrollment, or early college.

3.5. "Core Course of Study" means the the courses taken during grades 9-12, for the Core Course of Study which include:

3.5.1. 4.0 credits of English;

3.5.2. 4.0 credits of mathematics taken in a progressive manner (at minimum Secondary Mathematics I, Secondary Mathematics II, Secondary Mathematics III and one class beyond); if the student is attending a school that has not implemented the Utah Core "K-12" Standards, a student would complete at minimum Algebra I, Geometry, Algebra II, and a class beyond Algebra II;

3.5.3. 3.5 credits of social studies;

3.5.4. 3.0 credits of lab-based natural science (one each of Biology, Chemistry, and Physics); and

3.5.5. 2.0 credits of the same world or classical language, other than English, taken in a progressive manner.

3.6. "Eligible Institutions" means institutions of USHE, or any private, nonprofit institution of higher education in Utah accredited by the Northwest Commission on Colleges and Universities (NWCCU).

3.7. "Excusable Neglect" means a failure to take proper steps at the proper time, not in consequence of carelessness, inattention, or willful disregard of the scholarship application process, but in consequence of some unexpected or unavoidable hindrance or accident.

3.8. "Exemplary Academic Achievement award" (Exemplary Award) means a renewable scholarship to be awarded to students who complete the eligibility requirements of section 4.2 of this policy.

3.9. "Good Cause" means the student's failure to meet a scholarship application process requirement was due to circumstances beyond the student's control or circumstances that are compelling and reasonable.

3.10. "High school" means a public school established by the Utah State Board of Education or private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.11. "Home-schooled" refers to a student who has not graduated from a Utah high school and received letter grades for the Core Course of Study in grades 9-12.

3.12. "Recipient" means an applicant who receives an award under the requirements set forth in this policy.

3.13. "Reasonable progress" means enrolling and completing at least fifteen credit hours during Fall and Spring semesters and earning a 3.3 grade point average (GPA) or higher each semester while enrolled at an eligible institution and receiving the award.

3.14. "Renewal Documents" include institutionally produced documents demonstrating that the recipient has met the required semester GPA and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester for which the recipient is seeking award payment.

3.15. "Scholarship Appeals Committee" means the committee designated by the Commissioner of Higher Education to review appeals of Regents' Scholarship award decisions and take final agency action regarding awards.

3.16. "Scholarship Staff" means the group assigned to review Regents' Scholarship applications and make initial decisions awarding the scholarships.

3.17. "Substantial Compliance" means the applicant, in good faith, complied with the substantial or essential scholarship application requirements and has demonstrated likely eligibility but failed to comply exactly with the application specifics.

3.18. "UESP" means the Utah Educational Savings Plan.

3.19. "USHE" means the Utah System of Higher Education, which includes the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State University, Utah Valley University, and Salt Lake Community College.

3.20. "Weighted Grade" means a grade shall be weighted if a student completed an advanced placement, international baccalaureate or college course. The grade weight given is half the value of the high school credits earned for the course. For AP and IB courses all grades are averaged and then the weight is applied. When college credit is earned the grade weight is applied to the grade shown on the college transcript.

R765-609-4. Base Award Requirements.

4.1. To qualify for the Regents' Scholarship Base Award, the applicant shall satisfy the following criteria:

4.2. Complete the Core Corse of Study as defined in section 3.5 of this policy subject to the following criteria:

4.2.1. Not all courses that meet state and individual district high school graduation requirements meet the scholarship requirements;

4.2.2. Course Availability: In addition to taking courses at the school they are attending, a student may complete coursework through other accredited Utah high schools or Utah eligible institutions;

4.2.3. A student may meet a course requirement through a competency-based assessment provided it is documented on a transcript and has a letter grade(A-C) assigned;

4.2.4. The courses completed shall be unique except when repeated for a higher grade as noted in section 4.4. Students may not take a standard course and then enroll in the honors version of the same course and count both toward meeting the scholarship credit requirements and, when applicable, the requirement of progression; and

4.2.5. Repeated course work shall not count toward accumulation of required credits.

4.3. GPA: The applicant shall demonstrate completion of the Core Course of Study with a non-weighted cumulative high school GPA of at least 3.0.

4.4. Minimum Grade Requirement: the applicant shall earn a course grade on a transcript of "C" or above in each individual course listed in section 3.5. Certain courses may receive a weighted grade as outlined under subsection 9.5 as part of the scholarship award determination.

4.5. Replacing Low Grades by Retaking a Course: An applicant may retake a course to replace a low grade received. When retaking courses to replace a grade the following subsections apply:

4.5.1. The Entire Course: The applicant shall either (1) retake the entire original course, or (2) complete an approved course equal to or greater in credit value in the same subject-area. The math and foreign language requirement of progression shall be shown. This is true even if the applicant only received a lower grade in a single semester, term, trimester, or quarter.

4.5.2. The Higher of Two Grades: The higher of two grades in the same or an approved course will count towards meeting the scholarship requirements.

4.5.3. Approved Courses and Progression Determined by the Regents' Scholarship Review Committee: The Regents' Scholarship Review Committee reserves the right to determine if the repeated course qualifies as an approved course in the same subject-area and if progression is required and demonstrated.

4.5.4. "P" and "I" Grades not Accepted: Pass/fail or incomplete grades do not meet the minimum scholarship grade requirement.

4.6. College Course Work: College course work will only be evaluated if the applicant submits an official college transcript. If an applicant enrolls in and completes a college course worth three or more college credits, this shall be counted as one high school credit toward the scholarship requirements. The student is evaluated on the college grade earned, with the weight added to the college grade as defined in section 3.19.

4.7. ACT Score: The applicant shall submit at least one verified ACT score.

4.8. Utah High School Graduation: The applicant shall have graduated from a Utah high school.

4.9. Citizenship: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.10. No Criminal Record: A recipient shall not have a criminal record, with the exception of a misdemeanor traffic citation.

4.11. Mandatory Fall Semester Enrollment: A recipient shall enroll in fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral from the Board under subsection 7.2. Documentation shall include the recipient's name, the semester the recipient will attend, the name of the institution they are attending and the number of credits for which the recipient is enrolled.

4.12. New Century Scholarship: A recipient shall not receive both a Regents' Scholarship and the New Century Scholarship established in Utah Code Section 53B-8-105 and administered in R765-604.

R765-609-5. Exemplary Academic Achievement Award Requirements.

5.1. To qualify for the Regents' Scholarship Exemplary Academic Achievement Award, the applicant shall satisfy all requirements for the base award (see Subsection 3.4), and additionally meet all of the following requirements:

5.2. GPA: The applicant shall have a non-weighted cumulative high school GPA of at least 3.5.

5.3. Minimum Grade: The applicant shall earn a course grade on a transcript of "B" or above in each individual course listed in section 3.4. Certain courses may receive a weighted grade as part of the scholarship award determination.

5.4. ACT Score: The applicant shall submit a verified composite ACT score of at least 26.

R765-609-6. Continuation and Renewal of the Exemplary Award.

6.1. Duty of Student to Report Reasonable Progress Toward Degree Completion: In order to renew the Exemplary Achievement Award, the recipient shall submit renewal documents each semester, providing evidence of reasonable progress toward degree completion by the deadlines established in current program materials.

6.2. If the recipient fails to maintain a 3.3 GPA in a single semester the recipient is placed on probation and shall earn a 3.3 GPA or better the following semester to maintain eligibility. If the recipient again at any time earns less than a 3.3 GPA or fails to enroll and complete fifteen credit hours, except as outlined in section 7.2 of this policy, the scholarship may be revoked.

6.3. A recipient will not be required to enroll in fifteen credit hours if the student can complete his/her degree program with fewer credits.

R765-609-7. Application Procedures.

7.1. Application Deadline: Applicants shall submit an official scholarship application to the no later than February 1 of the year that they graduate from high school. A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority or consideration for the scholarship. Subject to funding, students may be considered based on date of completed and submitted application.

7.2. Required Documentation: Scholarship awards shall be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all course and GPA requirements, or if any information, including the attestation of criminal record or citizenship status, proves to be falsified the scholarship award may be denied. Required documents that shall be submitted with a scholarship application include:

7.2.1. the official online application;

7.2.2. an official high school paper or electronic transcript, official college transcript(s) when applicable, and any other miscellaneous transcripts demonstrating all completed courses and GPA. Final transcript(s) will be requested if the student is found conditionally approved, meaning that the student appears to be on track to receive the scholarship;

7.2.3. verified ACT score(s).

R765-609-8. Amount of Awards and Distribution of Award Funds.

8.1. Funding Constraints of Awards: The Board may limit or reduce the Base award and/or the Exemplary Academic Achievement award, as well as supplemental awards granted, depending on the annual legislative appropriations and the number of qualified applicants.

8.2. Amount of Awards.

8.2.1. Base Award: The Base award of up to $1,000 may be adjusted annually by the Board in an amount up to the average percentage tuition increase approved by the Board for USHE institutions.

8.2.2. Exemplary Academic Achievement Award: The Exemplary Academic Achievement award is up to the amount provided by law and as determined each spring by the Board based on legislative funding and the number of applicants. The Exemplary Academic Achievement award may be renewed for

the shortest of the following:

8.2.2.1. Four semesters of enrollment in fifteen credit hours;

8.2.2.2. Sixty-five credit hours; or

8.2.2.3. Until the student meets the requirements for a baccalaureate degree.

8.2.3. UESP Supplemental Award to Encourage College Savings: Subject to available funding, an applicant who qualifies for the Base award is eligible to receive up to an additional $400 in state funds to be added to the total scholarship award.

8.2.3.1. For each year the applicant is 14, 15, 16, or 17 years of age and had an active UESP account, the Board may contribute, subject to available funding, $100 (i.e., up to $400 total for all four years) to the recipient's award if at least $100 was deposited into the account for which the applicant is named the beneficiary.

8.2.3.2. If no contributions are made to an applicant's account during a given year, the matching amount will likewise be $0.

8.2.3.3. If contributions total more than $100 in a given year, the matching amount will cap at $100 for that year.

8.2.3.4. Matching funds apply only to contributions, not to transfers, earnings, or interest.

8.3. Distribution of Award Funds.

8.3.1. Award Payable to Institution: The award will be made payable to the institution. The institution may pay over to the recipient any excess award funds not required for tuition payments. Award funds shall be used for any qualifying higher education expense including: tuition, fees, books, supplies, equipment required for course instruction, or housing.

8.3.2. Credit Hours Dropped After Award Payment: If a recipient drops credit hours after having received the award which results in enrollment below fifteen credit hours, the scholarship will be revoked.

R765-609-9. Time Constraints and Continuing Eligibility.

9.1. Time Limitation: A Regents' Scholarship recipient shall use the award in its entirety within five years after his/her high school graduation date.

9.2. Deferral or Leave of Absence: A recipient shall apply for a deferral or leave of absence if they do not continuously enroll in fifteen credit hours.

9.2.1. Deferrals or leaves of absence may be granted, at the discretion of the Scholarship Review Committee, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

9.2.2. An approved deferral or leave of absence will not extend the time limits of the scholarship. The scholarship may only be used for academic terms which begin within five years after the recipient's high school graduation date.

9.3. No Guarantee of Degree Completion: Neither a Base award nor an Exemplary Academic Achievement award guarantees that the recipient will complete his or her associate or baccalaureate program within the recipient's scholarship eligibility period.

R765-609-10. Scholarship Determinations and Appeals.

10.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. shall review individual scholarship applications and make the awards determination. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria by the specified deadline.

10.2. Appeals: An applicant has the right to appeal the Scholarship Staff's adverse decision by filing an appeal with the Scholarship Appeals Committee subject to the following conditions:

10.2.1. The appeal must be in writing and submitted in person or through the U.S. Mail. Appeals must be hand delivered to the office or postmarked within 30 days of the date on which the scholarship notification was issued.

10.2.2. In the appeal, the applicant must provide his or her full name, mailing address, the high school he or she last attended, a statement of the reason for the appeal, and all information or evidence that supports the appeal. The failure of an applicant to provide the information in this subsection shall not preclude the acceptance of an appeal.

10.2.3. An appeal filed before the applicant receives official notification from the Scholarship Staff of its decision shall not be considered.

10.2.4. If an applicant failed to file his or her appeal on time, the Scholarship Appeals Committee shall notify the applicant of the late filing and give him or her an opportunity to explain the reasons for failing to file the appeal by the deadline. The Scholarship Appeals Committee shall not have jurisdiction to consider the merits of an appeal that is filed beyond the deadline unless it determines the applicant established excusable neglect.

10.2.5. The Scholarship Appeals Committee shall review the appeal to determine if the award decision was made in error, or if the applicant demonstrated substantial compliance with the scholarship application requirements but failed to meet one or more requirements for good cause.

10.2.6. If the Scholarship Appeals Committee determines the applicant has shown by a preponderance of the evidence that the initial decision was made in error, it shall either reverse the initial decision or remand it back to the Scholarship Staff for further review in accordance with the Appeals Committee's instructions.

10.2.7. If the Scholarship Appeals Committee determines the applicant has shown by a preponderance of the evidence that he or she demonstrated substantial compliance with the application process requirements and good cause for failing to meet one or more of the requirements, the Appeals Committee shall grant the applicant a reasonable period of time to complete the remaining requirements and to resubmit the completed application to the Scholarship Staff for a redetermination. In such a case, the applicant shall have the right to appeal an adverse decision according to this rule.

10.2.8. The Scholarship Appeals Committee's decision shall be in writing and contain its findings of facts, reasoning and conclusions of law and notice of the right to judicial review.

10.2.9. The Scholarship Appeals Committee's decision represents the final agency action. An applicant who disagrees with the Scholarship Appeal Committee's Decision may seek judicial review in accordance with Utah Code 63G-4-402.

KEY: higher education, scholarships, secondary education
December 12, 2016 53B-8-108
Notice of Continuation February 25, 2015

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-3. Division Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

(1) A request may be oral or written.

(2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.

(3) The party requesting a conference will be notified of the result:

(a) orally or in writing;

(b) in person or through counsel; and

(c) at the conclusion of the conference or within a reasonable time thereafter.

(4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:

(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;

(b) a copy of the notice required under Section 59-2-919.1;

(c) a copy of the minutes of the board of equalization;

(d) a copy of the property record maintained by the assessor;

(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;

(f) a copy of the evidence submitted by the parties to the board of equalization;

(g) a copy of the petition for redetermination; and

(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

(b) A party may raise a new issue before the commission.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:

(a) dismissal under Subsection (5)(a) or (c) was improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-405.

(1) Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) Except as provided in Subsections (2)(b) through (e), written orders signed by the commission will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality; or

(ii) the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required or allowed under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required or allowed under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are public information and may be publicized.

(3) Commission Notes and Workpapers.

(a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the commission, are protected, and access to the specific material is restricted to employees of the commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

(4) Reciprocal Agreements.

(a) The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with the federal government, other states, and political subdivisions within and without the state if the political subdivision, state, or federal government grant substantially similar privileges to this state.

(5) Statistical Information. The commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be made available after review and approval of the commission.

(6) Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) The commission may publicize the following information relating to a delinquent taxpayer:

(i) name;

(ii) address;

(iii) the amount of money owed by tax type; and

(iv) any legal action taken by the commission, including charges filed and property seized.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;
(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;
(iii) a description of the nature and extent of the individual's disability;
(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and
(v) a description of the requested accommodation if an accommodation has been identified.
(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.
(a) The reply shall advise the individual that:
(i) the requested accommodation is being supplied; or
(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or
(iii) the request for accommodation is denied. A reason for the denial must be included; or
(iv) additional time is necessary to review the request. A projected response date must be included.
(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.
(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.
(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.
(a) Requests for review shall be directed to:
Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711
(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.
(c) The request for review shall include:
(i) the individual's name and address;
(ii) the nature and extent of the individual's disability;
(iii) a copy of the accommodation coordinator's reply;
(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;
(v) a description of the accommodation desired; and
(vi) the signature of the individual or the individual's legal representative.
(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.
(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.
(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.
(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.
(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.
(7) Individuals with a disability who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.
B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:
1. name;
2. home address;
3. social security number and federal identification number, as required by the Tax Commission.
C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:
1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.
D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:
1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.
(2) The structure of the agency is as follows:
(a) The Office of the Commission, including the commissioners and the following units that report to the commission:
(i) Internal Audit;
(ii) Appeals;
(iii) Economic and Statistical; and
(iv) Public Information.
(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:
(i) Administration;
(ii) Taxpayer Services;
(iii) Motor Vehicle;
(iv) Auditing;
(v) Property Tax;
(vi) Processing; and
(vii) Motor Vehicle Enforcement.
(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.
(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under $10,000, or offers in compromise agreements in amounts under $10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of $10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of $10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office;

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

(f) liaison with the Legislature.

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-1-1410, 59- 2-1007, 59-7-517, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(c) A request for a hearing that is mailed but not received in the commission offices shall be considered timely filed if the

sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for redetermination that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(3) A petition for redetermination of a claim for refund filed in accordance with 59-1-1410 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for redetermination of a claim for refund that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(4)(a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.

(b) An appeal under Subsection (4)(a) is deemed to be timely if:

(i) in the case of mailed or hand-delivered documents:

(A) the petition is received in the commission offices on or before the close of business of the last day of the 30-day time period; or

(B) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day time period; or

(ii) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day time period.

(c) An appeal of an action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(5) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) The following may preside at a formal proceeding:

(a) a commissioner;

(b) an administrative law judge appointed by the commission; or

(c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:

(i) a commissioner;

(ii) an administrative law judge appointed by the commission; or

(iii) a hearing officer appointed by the commission.

(2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall

be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.

(ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the

proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

(A) The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(B) If a party withdraws an appeal, the initial decision becomes final as of the date that is 30 days after the date of the issuance of the initial hearing decision.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or

fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) A party with standing may petition for a declaratory order to challenge:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(3) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(4) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(5) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the

application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter

10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (4)(a) or (4)(b).

(5) Information that may be disclosed under Subsection 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under Subsection (5)(c)(i).

(6)(a) Except as provided in statute and Subsection (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside an action or proceeding by any person conducting or participating in any action or proceeding.

(b) Notwithstanding Subsection (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under Subsection (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure

to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor:

(i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.

(ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) two commissioners are present at a single anchor location; or

(b) one commissioner is present at the anchor location.

(2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.

(3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

(1) DHL Express (DHL):

(a) DHL Same Day Service;

(b) DHL Next Day 10:30 a.m.;

(c) DHL Next Day 12:00 p.m.;

(d) DHL DHL Next Day 3:00 p.m.; and

(e) DHL 2nd Day Service;

(2) Federal Express (FedEx):

(a) FedEx Priority Overnight;

(b) FedEx Standard Overnight;

(c) FedEx 2 Day;

(d) FedEx International Priority; and

(e) FedEx International First; and

(3) United Parcel Service (UPS):

(a) UPS Next Day Air;

(b) UPS Next Day Air Saver;

(c) UPS 2nd Day Air;

(c) UPS 2nd Day Air A.M.;

(d) UPS Worldwide Express Plus; and

(e) UPS Worldwide Express.

R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

(a) follow the procedures set forth in commission rules:

(i) R861-1A-9, Tax Commission as Board of Equalization;

(ii) R861-1A-11, Appeal of Corrective Action;

(iii) R861-1A-20, Time of Appeal;

(iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;

(v) R861-1A-23, Designation of Adjudicative Proceedings;

(vi) R861-1A-24, Formal Adjudicative Proceedings;

(vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;

(viii) R861-1A-27, Discovery;

(ix) R861-1A-28, Evidence in Adjudicative Proceedings;

(x) R861-1A-29, Decision, Orders, and Reconsideration;

(xi) R861-1A-30, Ex Parte Communications;

(xii) R861-1A-31, Declaratory Orders;

(xiii) R861-1A-32, Mediation Process;

(xiv) R861-1A-33, Settlement Agreements;

(xv) R861-1A-34, Private Letter Rulings;

(xvi) R861-1A-38, Class Actions;

(xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and

(xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and

(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.

(2) Written minutes of a meeting under Subsection (1)(b) shall include:

(a) the date, time, and place of the meeting;

(b) the names of each person present at the meeting;

(c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;

(d) a record, by commissioner, of each vote taken by the commission;

(e) a summary of comments made by a person, other than a commissioner, present at the meeting; and

(f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.

(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:

(a) properly labeled or identified with the date, time, and place of the meeting; and

(b) a complete and unedited record of the meeting.

R861-1A-46. Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110.

(1) Definitions.

(a) "Division" means the Auditing Division of the commission.

(b) "Purchaser refund request" means:

(i) a refund request for sales tax overpaid; and

(ii) submitted by a person other than the seller that originally collected and remitted the sales tax to the commission.

(c) "Required information and documents" means, for each transaction included in a purchaser refund request:

(i) a description of the item for which a refund is requested;

(ii) the invoiced transaction date;

(iii) the taxable purchase amount;

(iv) the tax rate applied to the purchase amount;

(v) the invoice number;

(vi) invoices or receipts or other books and records that show the items purchased and sales tax charged;

(vii) the sales tax paid;

(viii) the reason and basis in Utah law for exempting or excluding the item from sales tax;

(ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion;

(x) the amount of sales tax overpaid;

(xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made;

(xii) if an agent applies for the refund on behalf of a purchaser, a power of attorney;

(xiii) the name and address of the seller; and

(xiv) a signed statement that the seller that calculated and remitted the sales tax:

(A) has not provided a sales tax refund or credit; and

(B) will not be asked to provide a sales tax refund or credit.

(2)(a) Except as provided in Subsection (3), a person submitting a purchaser refund request shall include the required information and documents with the application to the division.

(b) The items described in Subsection (2)(a) shall be provided to the division in the format and manner prescribed by the division.

(c) If the application is not accompanied by all of the required information and documents, the division shall send a notice to the person that submitted the purchaser refund request.

(d) The notice described in Subsection (2)(c) shall:

(i) indicate the required information and documents that are missing; and

(ii) allow the person submitting the purchaser refund request 30 days to provide the missing required information and documents to the division.

(e)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (2)(d)(i) within the time period described in Subsection (2)(d)(ii) may contact the division to request an extension of time to provide the required information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (2)(e)(i).

(f) If the division has not received all of the required information and documents within the time period described in Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e), the division shall:

(i) evaluate the purchaser refund request based solely on the required information and documents received; and

(ii) dismiss for lack of evidence requests for refunds on items for which the division has not received the required information and documents.

(g)(i) Dismissals under Subsection (2)(f) may be appealed to the commission.

(ii) On an appeal under Subsection (2)(g)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e).

(3)(a) A person who submits a purchaser refund request may, at the time the application for the refund is filed, request the division use a sampling method in its review of the purchaser refund request.

(b) A person requesting a sampling method of review under Subsection (3)(a) shall include the following information for each transaction included in the purchaser refund request with the application to the division:

(i) the invoice number;

(ii) the invoiced transaction date;

(iii) the taxable purchase amount;

(iv) the tax rate applied to the purchase amount;

(v) the sales tax paid;

(vi) the amount of sales tax overpaid;

(vii) the name and address of the seller

(viii) a description of the item for which a refund is requested; and

(ix) the reason and basis in Utah law the item is exempt or excluded from sales tax.

(c) The items described in Subsection (3)(b) shall be provided to the division in the format and manner prescribed by the division.

(4)(a) If the division and a person submitting a purchaser refund request agree to the division's use of a sampling method in its review of the purchaser refund request, the division shall:

(i) determine the items that will be included in the sample;

(ii) notify the person submitting the purchaser refund request of the items that will be included in the sample and the information and documents that must be submitted to the division; and

(iii) allow the person submitting the purchaser refund request 30 days to provide the information and documents to the division in the format and manner prescribed by the division.

(b)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (4)(a)(ii) within the time period described in Subsection (4)(a)(iii) may contact the division to request an extension of time to provide the information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted

under Subsection (4)(b)(i).

(c) Information and documents described in Subsection (4)(a)(ii) that are not received by the end of the period described in Subsection(4)(a), or if applicable, within an extension of time granted under Subsection (4)(b), shall be:

(i) considered errors; and

(ii) included in the overall error factor by which the purchaser refund request is decreased.

(d)(i) Errors under Subsection (4)(c) may be appealed to the commission.

(ii) On an appeal under Subsection (4)(d)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (4)(a), or if applicable, within an extension of time granted under Subsection (4)(b).

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

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Notice of Continuation November 10, 2016

10-1-405
41-1a-209
52-4-207
59-1-205
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59-1-502.5
59-1-602
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59-1-705
59-1-706
59-1-1004
59-1-1404
59-7-505
59-10-512
59-10-532
59-10-533
59-10-535
59-12-107
59-12-114
59-12-118
59-13-206
59-13-210
59-13-307
59-10-544
59-14-404
59-2-212
59-2-701
59-2-705
59-2-1003
59-2-1004
59-2-1006
59-2-1007
59-2-704
59-2-924
59-7-517
63G-3-301
63G-4-102
76-8-502
76-8-503
59-2-701
63G-4-201
63G-4-202
63G-4-203
63G-4-204
63G-4-205 through 63G-4-209
63G-4-302
63G-4-401
63G-4-503
63G-3-201(2)
68-3-7
68-3-8.5
69-2-5
42 USC 12201
28 CFR 25.107 1992 Edition

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

(1) For purposes of this rule, "item" includes:

(a) an admission;

(b) a product transferred electronically;

(c) a service; and

(d) tangible personal property.

(2)(a) An invoice or receipt issued by a seller shall separately state the sales tax collected on the invoice or receipt.

(b) If an invoice or receipt issued by a seller does not show the sales tax collected as required in Subsection (2)(a), sales tax will be assessed on the seller or purchaser based on the amount of the invoice or receipt.

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:

(a) separately states the tax exempt items on the invoice; or

(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

(4) Unless otherwise provided by statute, if a purchase consists of two or more items that are subject to sales tax at different rates, the entire purchase is subject to sales tax at the higher tax rate unless the seller, at the time of the transaction:

(a) separately states on the invoice the items subject to sales tax at each of the different sales tax rates; or

(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items subject to sales tax at the lower tax rate.

(5) A seller that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the seller collected the excess or remit the excess to the commission.

(a) A seller may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

(b) A seller may not offset an underpayment of tax on the seller's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;

2. of a change of character of the business, or

3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;

2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;

3. the person fails to renew its annual business license with the Department of Commerce; or

4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

(1)(a) Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

(b) The return filed by a remote seller under Section 59-12-107(4) shall be the return the seller would have filed if the seller were not a remote seller.

(2) If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

(3) If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

(4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

(a) New businesses that expect annual sales and use tax liability less than $1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

(b)(i) Businesses currently assigned a quarterly filing status, in good standing and reporting less than $1,000 in tax for the preceding calendar year may be changed to annual filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c)(i) Businesses assigned an annual filing status reporting in excess of $1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of $1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to

Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or

2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output

procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (17).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;

2. the purchase price of the vehicle;

3. the value allowed for the trade-in vehicle;

4. the net difference between the vehicle traded and the vehicle purchased;

5. the signature of the seller; and

6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) Subject to Subsection (1)(b), a lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(b) Fuel charges in a transaction for the lease or rental of a motor vehicle are not subject to sales tax pursuant to Subsection 59-12-104(1) if the fuel charges are:

(i) optional; and

(ii) separately stated on the invoice.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

(a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and

(b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1)(a) "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether

such charge is designated as a cover charge, minimum charge, or any such similar charge.

(b) This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

(2) "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

(3) "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

(4) If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

(5) Annual membership dues may be paid in installments during the year.

(6) Amounts paid for the following activities are not admissions or user fees:

(a) lessons, public or private;

(b) sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

(c) sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not

regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

(1) Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

(2) Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

(3) Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Purchases by the State of Utah, Its Institutions, and Its Political Subdivisions Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-104.6.

(1) "Lodging related purchase" is as defined in Section 59-12-104.6.

(2) A purchase made by the state, its institutions, or its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts is exempt from tax if the purchase is for use in the exercise of an essential governmental function.

(3) A purchase is considered made by the state, its institutions, or its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with the employee's own funds and is reimbursed by the state or local entity, that purchase is not made by the state or local entity and does not qualify for the exemption.

(4) An entity that qualifies under Subsections (2) and (3) for an exemption from sales and sales-related tax on a lodging related purchase:

(a) may not receive that exemption at the point of sale; and

(b) may apply for a refund of tax paid on forms provided by the commission.

(5) An entity that applies for a refund of sales and sales-related tax paid under Subsection (4)(b) shall:

(a) retain a copy of a receipt or invoice indicating:

(i) the amount of sales and sales-related tax paid for each purchase for which a refund of tax paid is claimed; and

(ii) the purchase was paid for directly by the entity; and

(b) maintain original records supporting the refund request for three years following the date of the refund and provide those records to the commission upon request.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to

and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

(a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal

property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal

property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two $6 meals, but the value of the free meal is limited to $5, the $12 is rung up and the $5 deducted, resulting in a taxable sale of $7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for $8,500 and a credit of $6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or $2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed $1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Service Plan Charges for Labor and Repair Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) "Service plan" includes an extended warranty agreement or other prepaid arrangement.

(2)(a) Service plan charges for a future taxable repair are subject to sales tax.

(b) Sales tax must also be collected on any deductible charged to a customer for the customer's share of the repair done under the service plan.

(3)(a) Service plan charges for items of tangible personal property that are converted to real property are not taxable.

(b) Service plan charges for items of tangible personal property that are permanently attached to real property are treated as follows:

(i) service plan charges for labor are not taxable; and

(ii) service plan charges for parts are taxable unless those parts are exempt under Title 59, Chapter 12, Part 1, Tax Collection.

(4) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a $50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the $50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a $50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telecommunications Service Pursuant to Utah Code Ann. Section 59-12-103.

(1) Taxable telecommunications service charges include subscriber access fees.

(2) Nontaxable telecommunications charges include:

(a) refundable subscriber deposits, interest, and late payment penalties;

(b) charges for interstate calls;

(c) telecommunications answering services received or relayed by a human operator;

(d) charges to repair subscriber equipment that is regarded as real property; and

(e) charges levied on subscribers to fund or subsidize special telecommunications services, including 911 service, special communications services for the deaf, and special telecommunications service for low income subscribers.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-211.

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

(3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

(4)(a) The provisions for determining the location of a transaction under Subsection (4)(b) apply if:

(i) a purchaser uses computer software;

(ii) there is not a transfer of a copy of the computer software to the purchaser; and

(iii) the purchaser uses the computer software at more than one location.

(b) The location of a transaction described in Subsection (4)(a) is:

(i) if the seller is required to collect and remit tax to the commission for the purchase, and the purchaser provides the seller at the time of purchase a reasonable and consistent method for allocating the purchase to multiple locations, the location determined by applying that reasonable and consistent method of allocation; or

(ii) if the seller is required to collect and remit tax to the commission for the purchase , and the seller does not receive information described in Subsection (4)(b)(i) from the purchaser at the time of the purchase, the location determined in accordance with Subsections 59-12-211(4) and (5); or

(iii) if the purchaser accrues and remits sales tax to the commission for the purchase, the location determined:

(A) by applying a reasonable and consistent method of allocation; or

(B) in accordance with Subsections 59-12-211(4) and (5).

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Service Charges, Tips, Gratuities, Cover Charges, and Other Similar Charges Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on service charges, tips, gratuities, cover charges, or other similar charges included on a patron's bill that are required to be paid.

(b) Voluntary amounts left on the table or added to a credit card charge slip are not subject to sales tax.

(2) A service charge, tip, gratuity, cover charge, or other similar charge that a restaurant, cafe, club, private club, or similar business includes on a patron's bill is presumed to be required unless:

(a) language on the front of the bill states that the service charge, tip, gratuity, cover charge, or other similar charge is voluntary and may be increased or decreased by the patron; and

(b) the language described in Subsection (2)(a) is in the same font size as the service charge, tip, gratuity, cover charge, or other similar charge that the restaurant, cafe, club, private club, or similar business included on the bill.

(3) Charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered,

and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

(a) inspected in this state; or

(b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

(1) Definitions.

(a) "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

(b) "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

(2) Except as provided in Subsection (3), the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

(3) If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

(4) The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

(5) An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

(6) A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

(7) A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the commission:

(a) on forms provided by the commission, and

(b) at the time and in the manner sales and use tax is remitted to the commission.

(8) A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

(a) the name and address of the user of the taxable energy;

(b) the volume of taxable energy delivered to the user; and

(c) the entity from which the taxable energy was purchased.

(9) The information required under Subsection (8) shall be provided to the commission:

(a) for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value; and

(b)(i) except as provided in Subsection (9)(b)(ii), at the time the person delivering the taxable energy files sales and use tax returns with the commission; or

(ii) if the person delivering the taxable energy files an annual information return under Subsection 10-1-307(5), at the time that annual information return is filed with the commission.

R865-19S-104. County Option Sales Tax Distribution

Pursuant to Utah Code Ann. Section 59-12-1102.

A. The $75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1)(a) Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

(2) Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

(3) The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

(a) medical services;

(b) boarding services; or

(c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) Graphic design services are not subject to sales and use tax:

(a) if the graphic design is the object of the transaction; and

(b) even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

(2) Except as provided in Subsection (3), if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

(a) there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

(b) the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

(3) A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

R865-19S-113. Sales Tax Obligations of Aircraft and Boat Tour Operators, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (2) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(3) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

A. "Clothing" includes:

1. aprons for use in a household or shop;
2. athletic supporters;
3. baby receiving blankets;
4. bathing suits and caps;
5. beach capes and coats;
6. belts and suspenders;
7. boots;
8. coats and jackets;
9. costumes;
10. diapers, including disposable diapers, for children and adults;
11. ear muffs;
12. footlets;
13. formal wear;
14. garters and garter belts;
15. girdles;
16. gloves and mittens for general use;
17. hats and caps;

18. hosiery;
19. insoles for shoes;
20. lab coats;
21. neckties;
22. overshoes;
23. pantyhose;
24. rainwear;
25. rubber pants;
26. sandals;
27. scarves;
28. shoes and shoe laces;
29. slippers;
30. sneakers;
31. socks and stockings;
32. steel toed shoes;
33. underwear;
34. uniforms, both athletic and non-athletic; and
35. wearing apparel.

B. "Clothing" does not include:

1. belt buckles sold separately;
2. costume masks sold separately;
3. patches and emblems sold separately;
4. sewing equipment and supplies, including:

a) knitting needles;
b) patterns;
c) pins;
d) scissors;
e) sewing machines;
f) sewing needles;
g) tape measures; and
h) thimbles; and

5. sewing materials that become part of clothing, including:

a) buttons;
b) fabric;
c) lace;
d) thread;
e) yarn; and
f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:

A. breathing masks;
B. clean room apparel and equipment;
C. ear and hearing protectors;
D. face shields;
E. hard hats;
F. helmets;
G. paint or dust respirators;
H. protective gloves;
I. safety glasses and goggles;
J. safety belts;
K. tool belts; and
L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:

A. ballet and tap shoes;
B. cleated or spiked athletic shoes;
C. gloves, including:
(i) baseball gloves;
(ii) bowling gloves;
(iii) boxing gloves;
(iv) hockey gloves; and
(v) golf gloves;
D. goggles;
E. hand and elbow guards;
F. life preservers and vests;
G. mouth guards;
H. roller skates and ice skates;
I. shin guards;
J. shoulder pads;
K. ski boots;
L. waders; and
M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

A. The computation of sales and use tax must be:

1. carried to the third place; and
2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:

1. item basis; or
2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

1. monthly; and
2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:

1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and
2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of

tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

(a) land;
(b) buildings;
(c) raw materials;
(d) supplies;
(e) film;
(f) services;
(g) transportation;
(h) gas, electricity, and other fuels;
(i) admissions or user fees; and
(j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

(a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and

(b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(2) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(c) "New or expanding establishment" means:

(i)(A) the creation of a new web search portal establishment in this state; or

(B) the expansion of an existing Utah web search portal establishment if the expanded establishment increases services or is substantially different in nature, character, or purpose from the existing Utah web search portal establishment.

(ii) The operator of a web search portal establishment who closes operations at one location in this state and reopens the same establishment at a new location does not qualify as a new or expanding establishment without demonstrating that the move meets the conditions set forth in Subsection (1)(c)(i).

(2) The exemption for certain purchases by a web search portal establishment does not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.

For purposes of determining the amount of sales tax due in specie legal tender and in dollars for a purchase made in specie legal tender, if the London fixing price is not available for a day on which a purchase is made in specie legal tender, a seller shall use the latest available London fixing price for the specie legal tender the purchaser paid that precedes the date of the purchase.

KEY: charities, tax exemptions, religious activities, sales tax
December 8, 2016 9-2-1702
Notice of Continuation November 10, 2016 9-2-1703
10-1-303
10-1-306
10-1-307
10-1-405
19-6-808
26-32a-101 through 26-32a-113
59-1-210
59-12
59-12-102
59-12-103
59-12-104
59-12-105
59-12-106
59-12-107
59-12-108
59-12-118
59-12-301
59-12-352
59-12-353

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

(1) Definitions.

(a) "Person" is as defined in Section 68-3-12.

(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

(c) "Unit operator" means a person who operates all producing wells in a unit.

(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;
(b) the address of the property; and
(c) the serial number of the property.
(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:
(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.
(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.
(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.
(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.
(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.
(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.
(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.
(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.
(i) All definitions contained in Section 11-13-103 apply to this rule.
(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.
(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.
(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.
(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:
(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.
(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.
(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.
(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.
(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.
(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.
(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.
(2) The ad valorem training and designation program consists of several courses and practica.
(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course 101 - Basic Appraisal Principles;

(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or

educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of

January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net

annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(11)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (11)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (11)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(12) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(13) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(14) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in

Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustmentsor other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b).(c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2017 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing

authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

(A) barricades/warning signs;

(B) library materials;

(C) patterns, jigs and dies;

(D) pots, pans, and utensils;

(E) canned computer software;

(F) hotel linen;

(G) wood and pallets;

(H) video tapes, compact discs, and DVDs; and

(I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
16	69%
15	40%
14 and prior	10%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
16	88%
15	78%
14	67%
13	57%
12	47%
11	36%
10	24%
09 and prior	12%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;

(B) alarm systems;

(C) shopping carts;

(D) ATM machines;

(E) small equipment rentals;

(F) rent-to-own merchandise;

(G) telephone equipment and systems;

(H) music systems;

(I) vending machines;

(J) video game machines; and

(K) cash registers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
16	82%
15	67%
14	51%
13	34%
12 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks:

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides; and

(J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
16	89%
15	80%
14	71%
13	61%
12	52%
11	43%
10	32%
09	22%
08 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2017 percent good applies to 2017 models purchased in 2016.

(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
17	90%
16	70%
15	64%
14	59%
13	53%
12	48%
11	42%
10	36%
09	31%
08	25%
07	20%
06	15%
05	10%
04 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

(A) medical and dental equipment and instruments;

(B) exam tables and chairs;

(C) microscopes; and

(D) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
16	90%
15	84%
14	76%
13	68%
12	61%
11	54%
10	45%
09	37%

08	29%
07	20%
06 and prior	11%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

(A) manufacturing machinery;

(B) amusement rides;

(C) bakery equipment;

(D) distillery equipment;

(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;

(G) machine shop equipment;

(H) processing equipment;

(I) auto service and repair equipment;

(J) mining equipment;

(K) ski lift machinery;

(L) printing equipment;

(M) bottling or cannery equipment;

(N) packaging equipment; and

(O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

(I) VGO (Vacuum Gas Oil) reactor;

(II) HDS (Diesel Hydrotreater) reactor;

(III) VGO compressor;

(IV) VGO furnace;

(V) VGO and HDS high pressure exchangers;

(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

(II) VGO, amine, SWS, and HDS separators and drums;

(VIII) VGO and tank pumps;

(IX) TGU modules; and

(X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
16	90%
15	84%
14	76%
13	68%
12	61%
11	54%
10	45%
09	37%
08	29%
07	20%
06 and prior	11%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
16	92%
15	87%
14	81%
13	75%
12	70%
11	65%
10	57%
09	51%
08	46%
07	40%
06	34%
05	27%
04	19%
03 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

(A) data processing equipment;

(B) personal computers;

(C) main frame computers;

(D) computer equipment peripherals;

(E) cad/cam systems; and

(F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
16	62%
15	46%
14	21%
13	9%
12 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

(A) construction equipment;

(B) excavation equipment;

(C) loaders;

(D) batch plants;

(E) snow cats; and

(F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2017 model equipment purchased in 2016 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
16	49%
15	46%
14	43%
13	40%
12	38%
11	35%
10	32%
09	29%
08	26%

07	24%
06	21%
05	18%
04	15%
03 and prior	13%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2017 percent good applies to 2017 models purchased in 2016.

(iii) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
17	90%
16	71%
15	67%
14	63%
13	59%
12	56%
11	52%
10	48%
09	44%
08	40%
07	37%
06	33%
05	29%
04	25%
03	22%
02	18%
01 and prior	14%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

(A) crystal growing equipment;

(B) die assembly equipment;

(C) wire bonding equipment;

(D) encapsulation equipment;

(E) semiconductor test equipment;

(F) clean room equipment;

(G) chemical and gas systems related to semiconductor manufacturing;

(H) deionized water systems;

(I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
16	47%
15	34%
14	24%
13	15%
12 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

(A) billboards;

(B) sign towers;

(C) radio towers;

(D) ski lift and tram towers;

(E) non-farm grain elevators;

(F) bulk storage tanks;

(G) underground fiber optic cable;

(H) solar panels and supporting equipment; and

(I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
16	94%
15	90%
14	86%
13	81%
12	79%
11	76%
10	70%
09	66%
08	64%
07	60%
06	59%
05	54%
04	49%
03	43%
02	36%
01	29%
00	22%
99	15%
98 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

(A) houseboats equal to or greater than 31 feet in length;

() sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2017 percent good applies to 2017 models purchased in 2016.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
17	90%
16	66%
15	64%
14	61%

13	59%
12	57%
11	54%
10	52%
09	50%
08	47%
07	45%
06	43%
05	41%
04	38%
03	36%
02	34%
01	31%
00	29%
99	27%
98	24%
97	20%
96 and prior	16%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

(A) oil and gas exploration equipment;

(B) distillation equipment;

(C) wellhead assemblies;

(D) holding and storage facilities;

(E) drill rigs;

(F) reinjection equipment;

(G) metering devices;

(H) cracking equipment;

(I) well-site generators, transformers, and power lines;

() equipment sheds;

(K) pumps;

(L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
16	92%
15	84%
14	79%
13	72%
12	65%
11	59%
10	53%
09	45%
08	39%
07	33%
06	26%
05	18%
04 and prior	10%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

(A) dry freight van trailers;

(B) refrigerated van trailers;

(C) flat bed trailers;

(D) dump trailers;

(E) livestock trailers; and

(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2017 percent good applies to 2017 models purchased in 2016.

(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
17	95%
16	87%
15	83%
14	79%
13	75%
12	71%
11	67%
10	63%
09	59%
08	55%
07	51%
06	47%
05	41%
04	36%
03	30%
02	25%
01 and prior	17%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

(A) walls and partitions;

(B) plumbing and roughed-in fixtures;

(C) floor coverings other than carpet;

(D) store fronts;

(E) decoration;

(F) wiring;

(G) suspended or acoustical ceilings;

(H) heating and cooling systems; and

(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(ii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
16	94%
15	88%
14	82%
13	77%
12	71%
11	65%
10	59%
09	54%
08	48%
07	42%
06	36%
05 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;

(B) aircraft parts manufacturing molds;

(C) aircraft parts manufacturing patterns;

(D) aircraft parts manufacturing taps and gauges; and

(E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
16	82%
15	67%
14	51%
13	35%
12	19%
11 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

(A) electrical power generators; and

(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
16	97%
15	95%
14	92%
13	90%
12	87%
11	84%
10	82%
09	79%
08	77%
07	74%
06	71%
05	69%
04	66%
03	64%
02	61%
01	58%
00	56%
99	53%
98	51%
97	48%
96	45%
95	43%
94	40%
93	38%
92	35%
91	32%
90	30%
89	27%
88	25%
87	22%
86	19%
85	17%
84	14%
83	12%
82 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of $1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
16	75%
15	50%
14	25%
13 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2017.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

(a) the owner of record of the property;

(b) the property parcel, account, or serial number;

(c) the location of the property;

(d) the tax year in which the exemption was originally granted;

(e) a description of any change in the use of the real or personal property since January 1 of the prior year;

(f) the name and address of any person or organization conducting a business for profit on the property;

(g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

(h) a description of any personal property leased by the owner of record for which an exemption is claimed;

(i) the name and address of the lessor of property described in Subsection (2)(h);

(j) the signature of the owner of record or the owner's authorized representative; and

(k) any other information the county may require.

(3) The annual statement shall be filed:

(a) with the county legislative body in the county in which the property is located;

(b) on or before March 1; and

(c) using:

(i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

(ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

(i) company homes occupied by superintendents and other employees on 24-hour call;

(ii) storage facilities for railroad operations;

(iii) communication facilities; and

(iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

(i) land leased to service station operations;

(ii) grocery stores;

(iii) apartments;

(iv) residences; and

(v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property,

or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(A) the owner of record of the property;

(B) the property parcel number;

(C) the location of the property;

(D) the basis of the owner's knowledge of the use of the property;

(E) a description of the use of the property;

(F) evidence of the domicile of the inhabitants of the property; and

(G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

(A) on a form provided by the county; or

(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2017 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	799
2)	Cache	688
3)	Carbon	525
4)	Davis	853
5)	Emery	498
6)	Iron	793
7)	Kane	417
8)	Millard	788
9)	Salt Lake	711
10)	Utah	749
11)	Washington	649
12)	Weber	803

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	702
2)	Cache	587
3)	Carbon	418
4)	Davis	751
5)	Duchesne	486
6)	Emery	401
7)	Grand	383
8)	Iron	695
9)	Juab	444
10)	Kane	320
11)	Millard	691
12)	Salt Lake	611
13)	Sanpete	535
14)	Sevier	562
15)	Summit	459
16)	Tooele	447
17)	Utah	648
18)	Wasatch	485
19)	Washington	553
20)	Weber	704

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	557
2)	Box Elder	552
3)	Cache	445
4)	Carbon	277
5)	Davis	603
6)	Duchesne	341
7)	Emery	252
8)	Garfield	210
9)	Grand	242
10)	Iron	552
11)	Juab	299
12)	Kane	177
13)	Millard	547
14)	Morgan	384
15)	Piute	332
16)	Rich	177
17)	Salt Lake	465
18)	San Juan	173
19)	Sanpete	392
20)	Sevier	418
21)	Summit	313
22)	Tooele	299
23)	Uintah	370
24)	Utah	497
25)	Wasatch	337
26)	Washington	406
27)	Wayne	328
28)	Weber	560

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	458
2)	Box Elder	456
3)	Cache	345
4)	Carbon	178
5)	Daggett	188
6)	Davis	504
7)	Duchesne	239
8)	Emery	156
9)	Garfield	113
10)	Grand	146
11)	Iron	451
12)	Juab	198
13)	Kane	80
14)	Millard	445
15)	Morgan	285
16)	Piute	232
17)	Rich	82
18)	Salt Lake	360
19)	San Juan	79
20)	Sanpete	295
21)	Sevier	320
22)	Summit	216
23)	Tooele	204
24)	Uintah	273
25)	Utah	399
26)	Wasatch	240
27)	Washington	306
28)	Wayne	231
29)	Weber	457

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	614
2)	Box Elder	665
3)	Cache	614
4)	Carbon	614
5)	Davis	670
6)	Duchesne	614
7)	Emery	614
8)	Garfield	614
9)	Grand	614
10)	Iron	614
11)	Juab	614
12)	Kane	614
13)	Millard	614
14)	Morgan	614
15)	Piute	614
16)	Salt Lake	614
17)	San Juan	614
18)	Sanpete	614
19)	Sevier	614
20)	Summit	614
21)	Tooele	614
22)	Uintah	614
23)	Utah	675
24)	Wasatch	614
25)	Washington	726
26)	Wayne	614
27)	Weber	670

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	235
2)	Box Elder	255
3)	Cache	264
4)	Carbon	131
5)	Daggett	156
6)	Davis	268
7)	Duchesne	166
8)	Emery	138
9)	Garfield	104
10)	Grand	133
11)	Iron	261
12)	Juab	152
13)	Kane	109
14)	Millard	193
15)	Morgan	196
16)	Piute	190
17)	Rich	105
18)	Salt Lake	228
19)	Sanpete	193
20)	Sevier	199
21)	Summit	202
22)	Tooele	186
23)	Uintah	207
24)	Utah	251
25)	Wasatch	208
26)	Washington	227
27)	Wayne	172
28)	Weber	300

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	51
2)	Box Elder	93
3)	Cache	118
4)	Carbon	49
5)	Davis	52
6)	Duchesne	54
7)	Garfield	48
8)	Grand	49
9)	Iron	49
10)	Juab	51
11)	Kane	48
12)	Millard	47
13)	Morgan	64
14)	Rich	48
15)	Salt Lake	54
16)	San Juan	53
17)	Sanpete	54
18)	Summit	48
19)	Tooele	52
20)	Uintah	54
21)	Utah	50
22)	Wasatch	48
23)	Washington	48
24)	Weber	78

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	15
2)	Box Elder	59
3)	Cache	83
4)	Carbon	15
5)	Davis	16
6)	Duchesne	19
7)	Garfield	15
8)	Grand	15
9)	Iron	15
10)	Juab	16
11)	Kane	15
12)	Millard	14
13)	Morgan	28
14)	Rich	15
15)	Salt Lake	15
16)	San Juan	17
17)	Sanpete	19
18)	Summit	15
19)	Tooele	14
20)	Uintah	19
21)	Utah	16
22)	Wasatch	15
23)	Washington	14
24)	Weber	45

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	70
2)	Box Elder	75
3)	Cache	70
4)	Carbon	52
5)	Daggett	52
6)	Davis	61
7)	Duchesne	69
8)	Emery	72
9)	Garfield	76
10)	Grand	78
11)	Iron	74
12)	Juab	65
13)	Kane	75
14)	Millard	76
15)	Morgan	67
16)	Piute	91
17)	Rich	65
18)	Salt Lake	70
19)	San Juan	75
20)	Sanpete	63
21)	Sevier	64
22)	Summit	72
23)	Tooele	71
24)	Uintah	80
25)	Utah	66
26)	Wasatch	53
27)	Washington	65
28)	Wayne	89
29)	Weber	70

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	22
2)	Box Elder	23
3)	Cache	23
4)	Carbon	15
5)	Daggett	14
6)	Davis	19
7)	Duchesne	22
8)	Emery	21
9)	Garfield	23
10)	Grand	22
11)	Iron	22
12)	Juab	19
13)	Kane	24
14)	Millard	24
15)	Morgan	21
16)	Piute	26
17)	Rich	20
18)	Salt Lake	22
19)	San Juan	24
20)	Sanpete	18
21)	Sevier	18
22)	Summit	20
23)	Tooele	20
24)	Uintah	29
25)	Utah	23
26)	Wasatch	17
27)	Washington	21
28)	Wayne	29
29)	Weber	20

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	16
2)	Box Elder	17
3)	Cache	15
4)	Carbon	13
5)	Daggett	11
6)	Davis	13
7)	Duchesne	13
8)	Emery	14
9)	Garfield	16
10)	Grand	15
11)	Iron	15
12)	Juab	13
13)	Kane	15
14)	Millard	16
15)	Morgan	13
16)	Piute	18
17)	Rich	13
18)	Salt Lake	15
19)	San Juan	17
20)	Sanpete	13
21)	Sevier	13
22)	Summit	14
23)	Tooele	13
24)	Uintah	19
25)	Utah	14
26)	Wasatch	12
27)	Washington	13
28)	Wayne	18
29)	Weber	14

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	6

2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land		
1)	All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax

Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State

Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be

considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was

capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals
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11-13-302
41-1a-202
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59-2-103
59-2-103.5
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59-2-1113
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59-2-1703

R907. Transportation, Administration.
R907-62. Americans with Disabilities Act.
R907-62-1. Authority and Purpose.

(1) This rule is made under authority of Subsection 72-1-201(1)(h) and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Transportation, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides in part that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

R907-62-2. Definitions.

(1) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the Department.

(2) "Department" means the Department of Transportation created by Section 72-1-201.

(3) "Designee" means an individual appointed by the executive director or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the most senior leader of the region or working group affected by a complaint filed under this rule.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Executive Director" means the executive director of the department.

(7) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(8) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

R907-62-3. Filing of Complaints.

(1) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(3) Qualified individuals shall file their complaints within 180 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies.

(4) Each complaint shall:

(a) include the complainant's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1)(b) and Section 63G-2-304,consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R907-62-4. Investigation of Complaint.

(1) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R907-3-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Management and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

R907-62-5. Recommendation and Decision.

(1) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the

recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R907-62-6. Appeals.

(1) The complainant may appeal the director's decision to the executive director within ten working days after the complainant is served with the director's decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Management and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

R907-62-7. Classification of Records.

(1) Records created in administering this rule are classified as "protected" under Subsections 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R13-3-5 or a final decision upon appeal under Section R907-3-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Subsection 63G-2-302(1)(b) or "controlled" under Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(3) The written decision of the director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R907-3-7(2), classified as "private."

R907-62-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, discrimination, ADA
December 6, 2016 63G-3-201
Notice of Continuation September 2, 2016 67-19-32

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Authority and Purpose.

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

R909-1-2. Adoption of Federal Regulations.

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Parts 387 through 399, and Part 40,(October 1, 2014), as amended by the Federal Register through April 23, 2015 are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of $750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have $1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

R909-1-4. Implements of Husbandry.

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

KEY: trucks, transportation safety, implements of husbandry

December 6, 2016	**72-9-103**
Notice of Continuation August 30, 2016	**72-9-104**
	72-9-101
	72-9-301
	72-9-303
	72-9-701
	72-9-703

R909. Transportation, Motor Carrier.
R909-4. Motor Carrier, Enforcement, Penalties.
R909-4-1. Purpose.

The Department is responsible for ensuring compliance with all regulations pertaining to motor carrier safety, and size and weight. As part of that responsibility, the Department is granted authority to impose civil penalties on motor carriers that fail to comply with relevant regulations. The purpose of imposing civil penalties is to improve roadway safety and protect the public infrastructure by encouraging compliance with motor carrier regulations.

R909-4-2. Authority.

This Rule is enacted under the authority of 72-9-301 for enforcement; 72-9-103 rulemaking authority to enforce Title 72 Chapter 9; and Title 72 Chapter 9 Part 7 to impose penalties; 72-9-303 authority to issue cease and desist orders.

R909-4-3. Definitions.

(1) "Department" means the Utah Department of Transportation.

(2) "Notice of Agency Action" means the notice meeting the requirements of Title 63G Chapter 4, Utah Administrative Procedures Act that the Department issues to commence an adjudicative proceeding.

R909-4-4. Notice of Agency Action -- Civil Penalties.

(1) The Department may commence an adjudicative proceeding pursuant to rule R907-2 to review allegations of federal or state motor carrier regulation violations by serving a Notice of Agency Action upon the person or persons accused of the violations.

(2) If the Department proposes to impose a penalty under the Notice of Agency Action, the amount of the penalty will be determined employing the Uniform Fine Assessment software issued by Federal Motor Carrier Safety Administration for calculating the amounts of civil penalties for violations of motor carrier regulations. The Uniform Fine Assessment web site may be accessed at https://www.fmcsa.dot.gov/regulations/enforcement/uniform-fine-assessment

(3) In addition to other penalties, the Department may impose a civil penalty of not less than $500 and not more than $2,000 for each offense as authorized in 72-9-703.

(4) The Department may compromise the amount of the penalty. Factors the Department may use when considering whether to compromise the amount of the penalty may include:

(a) History of prior violations and prior conduct;

(b) degree of culpability;

(c) responsiveness to the Notice of Agency Action, including good faith efforts to take corrective action;

(d) gravity of the violation;

(e) ability to continue in business and ability to pay;

(f) whether the amount of the penalty will encourage future compliance, or;

(g) other matters which justice and public safety may require.

(5) When assessing the final penalty imposed on the motor carrier, the Department will indicate on the final agency order which factors the adjudicating officer considered to determine or compromise the final penalty that is imposed.

(6) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in Utah Code Section 63G-4-203.

R909-4-5. Appeals of Department Action.

(1) A person may appeal penalties imposed by the Department under this rule and pursuant to the Notice of Agency Action.

(2) Appeals shall be considered by a steering committee created by the Department. The steering committee shall have the powers granted to the Deputy Director, or his designee, in R907-1-3 for appeals from motor carrier penalties imposed by the Department.

(3) The committee's decision, if adopted by the Director of the Motor Carrier Division, will be considered a final agency order under the Administrative Procedures Act.

R909-4-6. Motor Carriers Delinquent in Paying Civil Penalties -- Prohibition on Transportation.

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the Department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

R909-4-7. Cease and Desist Order -- Registration Sanctions.

As authorized by Section 72-9-303, the Department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Regulations.

KEY: civil penalties, notice of agency action, motor carrier, enforcement

December 6, 2016 **72-9-103**
72-9-301
72-9-303