R23. Administrative Services, Facilities Construction and Management.
R23-13. State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management.
R23-13-1. Purpose.

This Rule establishes standards for parking at State facilities which are managed by the Division of Facilities Construction and Management.

R23-13-2. Authority.

This Rule is authorized under Subsection 63A-5-204, which authorizes the executive director of the Department of Administrative Services to adopt rules governing traffic flow and vehicle parking on state grounds surrounding facilities managed by DFCM, and under Subsection 53-1-109, authorizing DFCM to enforce traffic rules.

R23-13-3. Policy.

(1) The following rules pertaining to parking vehicles on grounds surrounding state facilities have been prepared in accordance with Subsections 63A-5-204 and 53-1-109.

(2) In preparing these rules specific attention has been given to the appearance of the grounds, presentation of the grounds at each facility to visitors, and optimal utilization of the parking areas at each facility for visitors, tourists, employees and individuals with disabilities.

R23-13-4. General Rules and Information.

(1) State of Utah Traffic Rules and Regulations, Title 41, Chapter 6, shall apply to all traffic using facilities under the management of the Division of Facilities Construction and Management.

(2) Painted curb color codes, intersection parking clearance, and all other traffic control markings shall conform with the State of Utah Traffic Rules and Regulations and all other applicable ordinances.

(3) All facilities under the direct management of the Division of Facilities Construction and Management shall have signs at main entrances designating public parking areas, employee parking, special needs parking, loading-unloading areas, bus parking areas and overnight parking areas.

(4) Employees with permanent disabilities - employees in this category displaying the disability license plate or disability parking permit shall be assigned parking in close proximity to their work at each facility.

(5) Employees with temporary disability - upon request an employee in this category may be allowed, by special permit, to park in disabled priority and public areas. The Division of Facilities Construction and Management should be contacted for this privilege.

(6) Overnight parking:

(a) Those employees who must leave vehicles at any facility are urged to contact facility designated security personnel to provide license numbers and expected return dates for security purposes.

(b) A designated parking area shall be established at all facilities managed by DFCM for employees to utilize for overnight parking between November 1 and April 1. Employees using this parking area shall be required to notify facility designated security personnel regarding the use of said parking area. Due to snow removal needs any vehicles parked outside of this designated area shall be subject to impoundment.

R23-13-5. Designated Parking Areas.

(1) Employee and visitor parking - designated parking areas for reserved parking and general parking for employees and visitors shall be noted on facilities signs as described above.

(2) Parking for the disabled - designated parking stalls, reserved exclusively for automobiles, including vans, displaying disability license plates or permits, shall be provided in all necessary parking areas. All parking areas will meet the minimum number of reserved stalls required by state and federal laws, rules and regulations governing public services and accessibility for individuals with disabilities.

(3) Employees with permanent disabilities - employees in this category displaying the disability license plate or disability parking permit or who justify specific need shall be assigned a parking stall in close proximity to their work at all facilities.

(4) Employees with temporary disabilities - an employee in this category may request a special permit to park in a disability priority stall or a reserved stall in a public area. The Department/Division Directors of the employee with a disability shall contact the Division of Facilities Construction and Management for this privilege. The Director shall provide the Division of Facilities Construction and Management Building Manager with the following information concerning the request: 1) type of disability; 2) length of time special permit will be required; 3) description of vehicle and license plate information.

R23-13-6. Parking Restrictions.

(1) General.

(a) Parking is prohibited in the following areas:

(i) Areas with red curb or otherwise posted are "No Parking";

(ii) All reserved areas for appropriate vehicles only;

(iii) All "Disability Only" zones will be strictly enforced;

(iv) Areas reserved for state vehicles are restricted for that use only;

(v) In front of any public stairs or entrance or blocking any public walkways;

(vi) Bus zones.

(b) Limited parking:

(i) Loading dock parking, where applicable, shall be limited to short-term delivery and service vehicles only, except as otherwise specifically marked in the dock areas.

(ii) Vehicles left sitting more than seven days will be considered abandoned and will be towed away, unless arrangements are made with the facility designated security personnel.

(c) The following areas shall be designated tow away zones. Any violating vehicle parking in these areas are subject to tow away at the owner's expense:

(i) Vehicles in front of or blocking any public stairs, building entrance, sidewalk or walkway; vehicles parking in or blocking any fire lane;

(ii) No vehicles, including service, delivery, or otherwise, shall park on any walkways;

(d) Construction or long-term service vehicle parking shall be arranged as needed by contacting the Division of Facilities Construction and Management's Building Manager and the facility designated security personnel.

R23-13-7. Enforcement.

(1) All traffic and parking signs and markings shall be strictly enforced by frequent observation and monitoring by facility designated security personnel.

(2) Facility designated security personnel shall be authorized to issue citations or other enforcement actions as may be necessary for parking control and regulation at all facilities.

(3) Those security personnel having full authority as peace officers shall enforce the State of Utah Traffic Rules and Regulations in their entirety including accident investigation, as well as parking restrictions established pursuant to these rules.

(4) Enforcement of these rules shall be accomplished in a prudent, effective manner including the following procedures:

(a) Issuance of citation for violation and subsequent payment of fine;

(b) Towing of any vehicle violating rules as listed above

at owner's expense;

(c) Reporting employees who consistently disregard the rules to their respective department or division head for discipline; discipline for constant offenders should include a notice of the discipline in the employee's personnel file.

(5) Fine amounts shall be those set under the jurisdiction of the facility designated security personnel.

R23-13-8. Right to Waive Rules.

Notwithstanding any rule stated in this document, the Division of Facilities Construction and Management reserves the right to waive any or all of these parking rules if it is deemed by the Division of Facilities Construction and Management to be in the best interest or temporary convenience of the State.

KEY: transportation law, parking facilities*
1994 **63A-5-204**
Notice of Continuation December 27, 2017 **53-1-109**

R23. Administrative Services, Facilities Construction and Management.
R23-22. General Procedures for Acquisition and Selling of Real Property.
R23-22-1. Purpose.

This rule defines the procedures of the Division of Facilities Construction and Management for acquisition and selling of real property.

R23-22-2. Authority.

(1) This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management. All actions under this rule that refer to the DFCM shall be undertaken by the Director of the Division of Facilities Construction and Management or the Director's duly authorized designee.

(2) This rule is also authorized and intended to implement the requirements of Section 63A-5-401, as well as Subsection 63A-5-103(1)(e)(iii).

R23-22-3. Definitions.

(1) Except as otherwise stated in this rule, the following definitions shall apply throughout this Rule as follows:

(a) "Board" means the Utah State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division or the Director's duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "State Agency" means any agency of the State of Utah that the Division is legally responsible for assisting with real estate transactions under this Rule. It may also include other public agencies when agreeable to the Director and consistent with applicable law.

R23-22-4. Policy.

It is the general policy of the Board that, except as otherwise allowed by the Utah Code, DFCM shall buy, sell or exchange real property in accordance with this Rule to ensure that the transaction is in the best interest of the State and that the value of the real property is congruent with the proposed price and other terms of the purchase, sale or exchange.

R23-22-5. Scope of This Rule.

(1) This Rule shall apply to all purchases, sales, donations and exchanges of DFCM except as otherwise allowed by the Utah Code. The requirements of this Rule shall also not apply to a contract or other written agreement prior to May 5, 2008.

(2) This Rule contains a waiver provision in Rule R23-22-9 that is consistent with Section 63A-5-401.

(3) Nothing in the rule shall prohibit DFCM from proceeding with easements, lot line and other minor, incidental adjustments with other State entities or other public/private persons or entities, as long as DFCM reasonably determines that such property is not historically significant after consultation with the State Historic Preservation Officer, that the transaction is in the public interest, and that the value of the transaction, as reasonably determined by DFCM, is less than $100,000.

R23-22-6. Requirements for Purchase, Accepting a Donation, or Exchanges of Real Property.

Unless waived under Rule R23-22-9, DFCM shall comply with the following in regard to the purchase, accepting a donation, or exchange of real property that is subject to this Rule:

(1) Selection Process. In accordance with State law, DFCM shall either perform the selection process or assist the State agency with the selection process. The selection process must comply with applicable State laws and rules. DFCM may use the services of a real estate professional in accordance with State law and selected pursuant to the Utah Procurement Code and applicable rules.

(2) Financing Requirements. As authorized by the Utah Legislature, DFCM shall assist, as appropriate with financing requirements, including, but not limited to, coordinating financing requirements through the State Building Ownership Authority, or other authorized bonding authority.

(3) Document Preparation and Approvals. In accordance with State law, DFCM shall negotiate, draft and execute the applicable Real Estate Contract and transaction documents with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract. Legal documents shall either be on a form approved by the Utah Attorney General or submitted for approval to the Utah Attorney General. The same requirements shall apply to closing documents prepared by the title company.

(4) Substantive Requirements. Unless a provision below is waived under Rule R23-22-9, DFCM shall obtain and review the following:

(a) Title Insurance. For all real estate transactions, DFCM shall obtain a preliminary title report and an Owner's Policy of Title Insurance. The Director may waive the obtaining of the Policy of Title Insurance for real estate transactions with an estimated value by DFCM of under $50,000 if the Director finds that the circumstances indicate that there is no potential title risk or if the transaction is between public entities.

(b) Environmental Assessment. A Phase I environmental Assessment or higher level environmental assessment is required.

(c) Engineering Assessment. DFCM shall obtain an engineering assessment of mechanical systems and structural integrity of improvements located on the property.

(d) A study of available services to the subject property shall be conducted. This includes an analysis of any required utilities, including water, sewer, gas, electricity and the like.

(e) A geotechnical analysis shall be obtained.

(f) A flood plain analysis shall be accomplished.

(g) Drainage issues shall be studied.

(h) Code Review. DFCM shall review the real property to ascertain its suitability under all applicable codes, including but not limited to, the Americans with Disabilities Act, laws, regulations and requirements.

(i) Appraisal. Except for transactions where State law does not require a certain value to be established, the value used by DFCM in the negotiation shall be based upon an appraisal completed by an appraiser that is a state-certified general appraiser under Section 61-2B-2 and when determined by the Director that it is in the interest of the State, the Director may require that the appraiser be a State of Utah licensed MAI appraiser.

(j) Maintenance and Operation History. DFCM shall obtain, if reasonably available, an analysis of past maintenance and operational expenses.

(k) Land Use Information. DFCM shall obtain, if reasonably available, the plat map, zoning and planning information.

(l) Survey. DFCM shall obtain an ALTA/ACSM Land Title Survey, current revision, of the subject property. An ALTA survey shall not be required if an ALTA survey has already been performed within the past 12 months unless otherwise determined by DFCM;

(m) Historic Assessment. DFCM shall undertake an historic property assessment under Section 9-8-404; and

(n) Other. DFCM shall also comply with other requirements determined necessary by law, rule, regulation or by DFCM.

R23-22-7. Determination of Surplus Real Property.

(1) In accordance with State law, DFCM may recommend that certain real property be declared as surplus.

(2) If DFCM estimates that the value of the real property is less than $100,000, then DFCM need only notify the Executive Director of the Department of Administrative Services prior to any declaration of surplus or disposition of the real property. DFCM shall also consult with the State Historic Preservation Office prior to any such declaration or disposition if the property is historically significant.

(3) If DFCM estimates that the value of the real property is $100,000 or more, then the DFCM shall notify the Director of the Department of Administrative Services as well as the staff of the Board, as well as receive approval from the Board prior to any declaration of surplus or disposition of the real property. The Board may declare the property surplus after considering the following:

(a) the recommendation and any comments by the Division;

(b) the input from state agencies and institutions, including, but not limited to, whether any State agency or institution has a need for the subject property;

(c) any input from concerned persons or entities;

(d) the appraised value of the property; and

(e) whether the property is historically significant. The property shall be considered historically significant if the real property, structures, statues or other improvements on the real property, is listed on the National Register of Historic Places or the State Register, or if the Board determines that it is historically significant after considering input from the State Historic Preservation Officer and others that have relevant input at the Board meeting.

(4) If the Utah Legislature directs that the DFCM sell the property, then it shall be deemed as declared surplus under this Rule without the need for any Board approval.

R23-22-8. Detailed Disposition Procedures.

After the appropriate determination is made that the real property is surplus, DFCM shall endeavor to sell the surplus real property on the open market, unless such property is to be conveyed to another State agency or public entity in accordance with applicable law or if DFCM is otherwise directed by the Utah State Legislature. DFCM may use the services of a real estate professional in accordance with State law and selected pursuant to the Utah Procurement Code and applicable rules. The sale shall be processed as follows:

(1) Approvals. DFCM shall confirm that all necessary approvals have been sought for the declaration of surplus property.

(2) Appraisal. Except for transaction where State law does not require a certain value be established or when the Director of DFCM estimates that the value of the property is less than $100,000, the value used by DFCM in the sale shall be based upon an appraisal completed by an appraiser that is a State of Utah certified general appraiser under Title 61, Chapter 2g, of the Utah Code and when determined by the Director that it is in the interest of the State, the Director may require that the appraiser be a State of Utah licensed MAI appraiser.

(3) Listing Price. DFCM shall establish a listing price based on the appraisal or, if no appraisal is required, based upon DFCM's knowledge of prevailing market conditions and other circumstances customarily used in the industry for such sales.

(4) Advertise.

(a) When not using a real estate agent, the property shall be reasonably identified and placed in a newspaper of general circulation throughout the State of Utah, including the area of the subject property, for a period of no less than ninety (90) calendar days. At the discretion of the Director, publication may also occur on the DFCM website and in a local or regional publication. DFCM shall set a time deadline for the submission of bids.

(b) When using a Real Estate Agent, in lieu of the advertising referred to in Rule R23-22-8(4)(a) above, advertising may be through a customary service used by the real estate agent.

(5) Award of Contract. DFCM shall endeavor to enter into a contract with the bidder/offeror that provides the best value to the State of Utah taking into account the price, other terms and factors related to the sale. If the contract is with a person that does not have the highest bidding/offered price, then DFCM shall file a written justification statement describing the circumstances in which the selected bidder/offeror represents the best value to the State of Utah.

(6) Document Preparation and Approvals. In accordance with State law, DFCM shall negotiate, draft and execute the applicable Real Estate Contract or transaction documents with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract. Legal documents shall either be on a form approved by the Utah Attorney General or submitted for approval to the Utah Attorney General. The same requirements shall apply to closing documents prepared by the title company.

R23-22-9. Waiver for Requirements, Other Than R23-22-6.

(1) The requirements under Rule R23-22-7 may not be waived.

(2) To the extent allowed by law, any provision of this Rule R23-22, other than Rule R23-22-7, may be waived by the DFCM Director when the adherence to the provision of the rule is not economically efficient or other special circumstances are documented which indicate that the enforcement of the rule would not be in the public interest.

KEY: procedures, selling, surplus, real property
November 21, 2014 63A-5-103
Notice of Continuation December 27, 2017 63A-5-401

R25. Administrative Services, Finance.
R25-3. Personal Use Expenditures Administrative Penalty Appeal Procedures.
R25-3-1. Authority and Purpose of Rule for Appeal Procedures.

(1) The authority for the rule on these appeal procedures is found in Section 63A-3-110.

(2) This rule establishes official procedures and standardized practices for administering these appeal procedures.

R25-3-2. Definitions.

Terms used in this rule are defined in Subsection 63A-3-110(1).

In addition:

"Administrator" means the Department of Administrative Services Division of Finance Director or designee.

"Appeal" means a formal request to a higher level of review of a lower level decision.

"Appeal Authority" means the individual(s) designated by the Administrator to act as the Appeal Authority hearing officer(s).

"Appellant" means the person who requested the review hearing.

"Extraordinary Circumstances" means a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, lack of preparation, or willful disregard in the processing of an Appeal, but in consequence of some unexpected or unavoidable hindrance or accident.

"Party(ies)" means the officer or employee commencing a Request for Review, all respondents, and all persons authorized by statute or agency rule to participate as Parties in an adjudicative proceeding.

"Personal Use Expenditure" means an expenditure made without the authority of law that is not directly related to the performance of an activity as a state officer or employee; primarily furthers a personal interest or a state officer or employee or a state officer's or employee's family, friend, or associate; and would constitute taxable income under federal law. It does not include a de minimis or incidental expenditure, or a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer's or employee's official duties, including a minimal allowance for a detour as provided by the state.

"Request for Review" means a formal request, in writing, for an informal hearing before the Appeal Authority.

"Responsible Governmental Entity" means the governmental entity from whose fund or account the Personal Use Expenditure or the payment for the indebtedness or liability for a Personal Use Expenditure was disbursed.

"Responsible Governmental Entity Head" means the executive director, commissioner, chief justice, or other top executive of the Responsible Governmental Entity, or a designee.

R25-3-3. Appeal and Request for Review Process.

Person(s) acting on an Appeal and Request for Review pursuant to Subsection 63A-3-110(4), and in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act, and these rules, shall conduct the Appeal process according to the following steps:

(1) A review hearing before the Appeal Authority may be requested only after the Responsible Governmental Entity has determined--in accordance with its own investigative and Appeal processes--the following:

(a) an employee or officer intentionally made a Personal Use Expenditure or incurred indebtedness or liability on behalf of, or payable by, the Responsible Governmental Entity for a Personal Use Expenditure in violation of Subsection 63A-3-110(2); furthermore,

(b) the Responsible Governmental Entity Head imposed upon the employee or officer the administrative penalties specified in Subsection 63A-3-110(3), in writing.

(2) Should an employee or officer disagree with the Responsible Governmental Entity Head's finding or authorization of the administrative penalties, the aggrieved Party may file a Request for Review with the Administrator.

(a) The Request for Review must be submitted to the Administrator in writing, using the form available from the Division of Finance, within 30 calendar days of the day the Responsible Governmental Entity Head's formal notice of the finding and authorized administrative penalties is issued. All related documentation required by the Division of Finance form must also be submitted with the form.

(b) Copies of the form and the required documentation must be submitted to the Responsible Governmental Entity Head and other Parties by the employee or officer requesting the hearing.

(3) Within 15 days of submission of the Request for Review, any Party to the hearing may file a response with the Administrator. The Party who submits a response shall send a copy of the response to other Parties.

R25-3-4. Administrator's Initial Review of Eligibility and Merit of the Request for Review.

(1) Upon receipt of the Request for Review, the Administrator shall make an initial determination on the basis of Section 63A-3-110 and Section 63G-4-201 that the Appeal Authority has authority to review or decide the requested Appeal:

(a) Procedural Issues. The Administrator shall make an initial determination of the timeliness, jurisdiction, standing, and eligibility of the issues to be advanced.

(b) Determination. The Administrator has authority to determine which types of Appeals may be heard by the Appeal Authority. Those types of Appeals found to have been resolved by a preponderance of the evidence at the level of the Responsible Governmental Entity Head or those that do not qualify for advancement to the Appeal Authority are precluded from further consideration and review by the Appeal Authority.

(c) Preclusion. When an Appeal request is precluded from an Appeal Authority review, the matter under dispute shall be deemed as final at the level of the Responsible Governmental Entity Head.

(2) The Administrator shall notify within 30 days the requesting Party and the Responsible Governmental Entity Head in writing that the Request for Review is either granted or denied, constituting the final action by the Administrator. The decision letter must describe the factual findings and conclusions of the Administrator's review. The letter must state that any Party may file with the Administrator a written request for reconsideration within 30 days after the date the Administrator issues the decision, in accordance with Section 63G-4-302.

(a) Filing of a request for reconsideration is not a prerequisite for seeking judicial review of the decision.

(3) The decision letter should include a statement that a Party aggrieved may obtain judicial review of the decision, in accordance with Section 63G-4-401, by filing a petition within 30 days after the date the decision is issued; or, in the case of a request for reconsideration, by filing a petition within 30 days after the date the decision is issued, in accordance of Section 63G-4-302.

R25-3-5. Commencement of Informal Adjudicative Proceedings.

(1) Purpose. An informal review hearing provides a fair

and impartial opportunity for the Parties to be heard and to present evidence. The adjudicative process allows the Appeal Authority to be completely informed about the case. After having considered the Parties' evidence, the Appeal Authority may then render a decision based upon all of the facts, circumstances, and applicable laws, rules, and policies.

(2) After granting the Request for Review, the Administrator shall promptly designate the Appeal Authority and its presiding hearing officer, as authorized in Subsection 63A-3-110(4)(b).

(3) The presiding Appeal Authority hearing officer shall schedule a hearing date at least 30 days from the mailing date of the hearing notice.

(4) A written notice of the review hearing, signed by the presiding Appeal Authority hearing officer, shall be mailed to the Administrator and all Parties and any other person who has a right to notice under statute or rule in accordance with Section 63G-4-201, and shall include the following:

(a) the names and mailing addresses of all persons to whom notice is being given, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Responsible Governmental Entity;

(b) the case file number or other reference number (if applicable);

(c) the name of the adjudicative proceeding;

(d) the date that the notice of the review hearing was mailed;

(e) a statement that the review hearing is to be conducted informally according to the provisions of rules adopted under Sections 63G-4-202 and 63G-4-203;

(f) a statement of the time and place of the scheduled review hearing, a statement of the purpose for which the hearing is to be held, and, to the extent known by the presiding Appeal Authority hearing officer, the questions to be decided;

(g) a statement that a Party who fails to attend or participate in a scheduled and noticed hearing may be held in default;

(h) a statement of the legal authority and jurisdiction under which the review hearing is to be maintained (i.e. Subsection 63A-3-110(4);

(i) the name, title, mailing address, and telephone number of the presiding Appeal Authority hearing officer.

R25-3-6. Commencement of Informal Adjudicative Proceedings -- Granting Continuance or Extension of Time.

(1) Notwithstanding Administrative Rule Subsection R25-3-5(3) above, after the review hearing date has been set, each Party may be granted one continuance or extension of time for the hearing, provided there are Extraordinary Circumstances justifying such continuance or extension. A Party desiring an extension of time or a continuance of the review hearing shall file a written request with the presiding Appeal Authority hearing officer.

(a) Every petition for a continuance shall specify the reason for the requested delay.

(b) In considering a request for continuance, the Appeal Authority shall take into account:

(i) whether the request was timely made in writing; and

(ii) whether the request is based on Extraordinary Circumstances.

R25-3-7. Informal Adjudicative Proceedings.

(1) An informal review hearing will be held only after timely notice to all Parties; timely notice being at least 30 days prior to the scheduled hearing in accordance with Administrative Rule Subsection R25-3-5(3) above.

(2) In reference to Section 63G-4-203, the following procedures for informal adjudicative proceedings apply:

(a) A hearing may be conducted without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the presiding Appeal Authority hearing officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent persons in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding.

(b) Discovery is prohibited, but the Appeal Authority may issue subpoenas and other orders to compel production of necessary evidence.

(c) All Parties shall have access to information contained in the case files and to all materials and information gathered in any investigation, to the extent permitted by law.

(d) Intervention is prohibited, except as stated in Subsection 63G-4-203(1)(g).

(e) A review hearing shall be open to all Parties named in the hearing notice, and all Parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

(f) The testimony and statements received at a review hearing may be under oath.

(g) The proceedings may be recorded electronically by the Department of Administrative Services Division of Finance at the division's expense. At its own expense any Party may have a reporter, who is approved by the division, prepare a transcript from the record of the hearing. If a Party desires that the testimony be recorded by means of a court reporter, that Party may employ a court reporter at its own expense and shall furnish a transcript of the testimony to the division free of charge. This transcript shall be available at the Division of Finance to any Party to the hearing.

R25-3-8. Informal Adjudicative Proceedings -- Subpoenas.

(1) Subpoena power. Pursuant to Subsection 63G-4-203(1)(e), the Appeal Authority may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The Appellant has the right to require the production of books, papers, records, documents, and other items pertinent to the facts at issue that are within the control of the governmental entity against which the Appeal is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the Appeal Authority.

(b) A person receiving a subpoena issued by the Appeal Authority will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a Party's representative to issue a subpoena must be reasonable and timely. At least 5 full working days' notice prior to a scheduled hearing must be given to the Appeal Authority, not counting preparation and delivery time. The requesting Party shall simultaneously notify the other Parties of the request.

(d) The original of each subpoena is to be presented to the person named therein, and, if applicable, a copy shall be issued to the counsel or representative of each Party.

(2) Service of subpoenas. Service of subpoenas shall be made by the requesting Party delivering the subpoena to the person named, unless the Appeal Authority is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services, or to send it by e-mail, or in any

combination.

(3) Proof of service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

R25-3-9. Informal Adjudicative Proceedings -- Witnesses.

(1) Availability of employees to testify. A governmental entity shall be responsible for making available any of its employees who are subpoenaed to testify in a review hearing.

(a) Off-duty employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Non-disruption. The Parties and their representatives and the Appeal Authority shall make every effort to avoid disruption to the operation of state government or other governmental entities in the calling of employees to testify in hearings under these Appeal procedures.

(c) Witness failure. If a requested witness does not appear at the scheduled hearing, the witness' failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive witnesses. If the number of witnesses requested by a Party is excessive, the Appeal Authority may require the Party to justify the request or face denial of part or all of the request.

(2) Hostile witnesses. When the presiding Appeal Authority hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the Party calling that witness as if under cross-examination. The Party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/sequestering of witnesses.

(a) The Appeal Authority presiding hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both Parties or in the presiding hearing officer's discretion.

(c) The presiding Appeal Authority hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management representative. Prior to a hearing, the Responsible Governmental Entity may designate one person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify, unless the presiding Appeal Authority hearing officer determines it is reasonable to expel the management representative for any or part of the hearing.

R25-3-10. Informal Adjudicative Proceedings -- Failure to Appear; Default.

When a Party or the Party's authorized representative to a proceeding fails to appear at a review hearing after due notice has been given, the presiding Appeal Authority hearing officer, at his or her discretion, may continue the matter, or may enter an order of default, pursuant to Section 63G-4-209, or may proceed to hear the matter in the absence of the defaulting Party.

R25-3-11. Informal Adjudicative Proceedings -- Issuance of Decisions; Final Action.

(1) Within 30 days after the close of the informal review hearing, the presiding Appeal Authority hearing officer shall issue in writing a signed decision, constituting the final action, which states the following:

(a) the decision;

(b) the reasons for the decision based on the facts appearing in the case files and on the facts presented in evidence at any review hearings;

(c) a statement that a Party aggrieved may within 20 days after the date that the decision is issued file with the presiding Appeal Authority hearing officer a written request for reconsideration;

(i) Filing of a request for reconsideration is not a prerequisite for seeking judicial review of the decision.

(d) a statement that a Party aggrieved may obtain judicial review of the decision in accordance with Section 63G-4-401 by filing a petition within 30 days after the date the decision constituting the final Appeal Authority action is issued; or, in the case of a request for a reconsideration, by filing a petition within 30 days after the date the decision is issued, in accordance of Section 63G-4-302;

(e) the names and mailing addresses of all persons to whom the decision is being given, and the name, title, and mailing address of any attorney or employee who was designated to appear for the Responsible Governmental Entity;

(f) the name, title, mailing address, and telephone number of the presiding Appeal Authority hearing officer.

(2) The distribution of the decision to all Parties, as well as to the Administrator, is accomplished when any of the following occurs:

(a) deposit postage prepaid with the U.S. Postal Service;

(b) deposit with State Mail and Distribution Services;

(c) personal delivery; or

(d) e-mail transmission.

(3) A mailing certificate must be attached to the decision, bearing the date of mailing and the names and addresses of those persons to whom the decision is originally distributed.

R25-3-12. Informal Adjudicative Proceedings -- Request for Reconsideration.

(1) Reconsideration. A written request for reconsideration may be filed by any Party with the presiding Appeal Authority hearing officer. It must be filed within 20 days after the date the decision is issued. The written reconsideration request must contain specific reasons why reconsideration is warranted with respect to the factual findings and conclusions of the Appeal Authority's final action. New or additional evidence may not be considered. A copy of the request for reconsideration shall be mailed to each Party by the person making the request.

(a) The presiding Appeal Authority hearing officer shall issue a written decision granting or denying the reconsideration request to the person making the request and shall send a copy of the decision to the other Parties.

(b) If the presiding Appeal Authority hearing officer does not issue a decision within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

R25-3-13. Record Retention.

(1) The Department of Administrative Services Division of Finance shall retain the record copy of the decision along with the minutes, or electronic recording, or court reporter transcript (if available) of the proceedings according to the designated State of Utah retention schedules.

R25-3-14. Appellant's Rights.

(1) Representation. An Appellant may be represented by an attorney of law. However, the State neither provides legal counsel or representation to employees or officers who request a review hearing nor pays the fees for their representation in the course of the Appeal proceedings.

(2) Pro Se Status. A Party to an Appeal proceeding may appear pro se. When a Party appears pro se, the Party is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements,

submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against an Appellant, a representative, or a witness who participates in or is scheduled to participate in an Appeal proceeding.

KEY: informal adjudicative proceedings, hearings, Finance appeals
December 22, 2017 63A-3-110

R58. Agriculture and Food, Animal Industry.
R58-2. Diseases, Inspections and Quarantines.
R58-2-1. Authority.

Promulgated Under the Authority of Sections 4-31-115, 4-31-118, 4-2-103(1)(c)(ii), and 4-2-103(1)(i).

R58-2-2. Definitions.

A. "Animal exhibition" - An event where animals are congregated for the purpose of exhibition and judging.

B. "Animals" - For the purpose of this chapter animals means poultry, rabbits, cattle, sheep, goats and swine.

C. "Terminal show" - A fair or livestock judging exhibition with designated species of animals that are declared "at risk animals" which at the conclusion of the event must be transported directly to slaughter.

R58-2-3. Reportable and Quarantinable Animal Diseases.

A. Reporting of Diseases. It shall be the responsibility of veterinary diagnostic laboratories, veterinary practitioners, livestock inspectors, and livestock owners to report immediately by phone or written statement to the Department of Agriculture and Food any of the diseases listed on the Utah Department of Agriculture and Food Reportable Disease list, available at the Utah Department of Agriculture and Food, Division of Animal Health, PO Box 146500, 350 North Redwood Road, Salt Lake City, UT 84114-6500.

1. All swine moving within the State of Utah shall be identifiable to determine the farm of origin as per 9 CFR,1,71.19, January 1, 2010, edition which is hereby adopted and is incorporated by reference within this rule.

2. All sheep and goats moving within the State of Utah shall, upon change of ownership, comply with federal Scrapie identification requirements as listed in 9 CFR Part 79, January 1, 2014, requiring official identification to determine the farm of origin.

3. Sheep and goats from Scrapie infected, exposed, quarantined or source flocks may not be permitted to move into or within the state, except to slaughter, unless a flock eradication and control plan, approved by the State Veterinarian in Utah, has been implemented in the flock where the diseased animal resides.

4. Any live scrapie-positive, suspect, or high-risk sheep or goat of any age and any sexually intact exposed sheep or goat of more than one year of age shall be required to possess official individual identification as listed in 9 CFR Part 79, January 1, 2014.

B. Quarantines. The Department of Agriculture and Food or its agent may issue quarantines on:

1. Any animal infected with diseases listed on the reportable disease list or any infectious or dangerous entity which is determined to be a threat to other animals or humans.

2. Any animal which it believes may jeopardize the health of other animals, or humans.

3. Any area within the State of Utah to prevent the spread of infectious or contagious diseases.

a. Quarantines shall be deemed issued to owners or caretakers of animals affected with or exposed to infectious, contagious, or communicable diseases by serving an official notice of quarantine to the owner or caretaker in person, by phone, by public meetings, or by registered mail to his last known address.

b. On and after the effective date of quarantine no animals shall be moved or allowed to be moved from or onto the quarantined premises without the owner or caretaker of the quarantined livestock having first obtained a written permit from the Utah Department of Agriculture and Food or its authorized agent to move the animals.

c. Quarantines shall be released upon compliance with Section 4-31-116; as well as with 9 CFR 71.2, January 1, 2014, edition; and the Utah Health Code Sections 26-6, 19-4 and 19-5.

R58-2-4. Disease Control at Animal Exhibitions and Livestock Auctions.

A. To reduce potential spread of disease from animal exhibitions and livestock auctions the Utah Department of Agriculture and Food may:

1. Specify an animal exhibition a terminal show for designated species coming to the event when the Utah Department of Agriculture and Food is aware that a disease risk exists in that local area or the state.

2. Give each county in the state the authority to designate a terminal show for any animal exhibition or fair being held within the county.

3. Give the specific show that is a member of the Junior Livestock Show Association the authority to designate a terminal show.

4. Restrict movement of livestock into and out of a livestock auction or temporary livestock sale when the Utah Department of Agriculture and Food is aware of a disease risk exists in that local area or the state.

KEY: quarantines

August 12, 2015	**4-31-15**
Notice of Continuation June 9, 2016	**4-31-17**
	4-2-2(1)(c)(ii)

R58. Agriculture and Food, Animal Industry.
R58-3. Brucellosis Vaccination Requirements.
R58-3-1. Authority.

(1) Promulgated under the authority of section 4-31-109 and Subsections 4-2-103(1)(c)(i), 4-2-103(1)(j).

(2) It is the intent of this rule to state the brucellosis vaccination requirements for cattle and bison within Utah.

R58-3-2. Definitions.

(1) "Accredited Veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with the provisions of 9 CFR 161 to perform functions required by cooperative State-Federal disease control and eradication programs.

(2) "Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.

(3) "Brucellosis Technician" means an individual approved and trained by the State Veterinarian or designee to administer Brucella abortus vaccine and appropriately identify the animal.

(4) "Cattle" means all domestic bovine (genus Bos).

(5) "Official USDA vaccination tag" means a metal identification eartag that provides unique identification for each individual animal by conforming to the nine (9)-character alpha-numeric national uniform eartagging system or any other unique identification device approved by the United States Department of Agriculture.

(6) "RFID" means a radio frequency identification device used as individual identification of livestock.

R58-3-3. Utah Cattle and Bison Vaccination Requirements.

(1) All Utah cattle and bison heifers intended for replacement breeding animals must be vaccinated against Brucella abortus.

(2) Vaccination of cattle and bison heifer calves shall be administered by an accredited veterinarian or by a brucellosis technician.

(3) All cattle and bison heifers shall be vaccinated with strain RB-51 administered between 4 and 12 months of age. These heifers shall be properly identified by official tattoos and ear tag (either official USDA vaccination tag or RFID of approved design) and shall be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

(4) Cattle and bison heifers not intended for replacement breeding are exempt from the vaccination requirement in subsection R58-3-3(1).

KEY: brucellosis, vaccination, cattle, bison

April 16, 2014	**4-31-109**
Notice of Continuation January 12, 2017	**4-2-2(1)(c)(i)**
	4-2-2(1)(j)

R58. Agriculture and Food, Animal Industry.
R58-4. Use of Animal Drugs and Biologicals in the State of Utah.
R58-4-1. Authority.

Promulgated under authority of Section 4-5-104 and 9 CFR 101, 102 and 103, January 1, 2006 edition.

R58-4-2. Manufacturing, Induction Specifications.

A. No person, firm, corporation, or other company shall manufacture in this state or transport or introduce into the state, in any manner, any virus or bacterial product carrying infective agents of infectious, contagious, or communicable diseases of domestic animals or poultry without first being licensed by Biologics Division of United States Department of Agriculture and Food-Animal Plant Health Inspection Service (USDA-APHIS) and obtaining a written permit from the Commissioner of Agriculture and Food.

R58-4-3. Registration Requirements.

Veterinary practitioners, or other persons, firms, corporations, or manufacturers, except those licensed within the State of Utah, engaged in the distribution or manufacture of animal biologics, including diagnostic tests, carrying infective agents, or inactivated agents, for the prevention, treatment or control of contagious, infectious or communicable disease of livestock shall register their names and receive written authority from the Commissioner of Agriculture and Food.

KEY: disease control
August 15, 1997 4-5-2
Notice of Continuation June 9, 2016 4-5-17

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

A. Promulgated under authority of Section 4-30-104 and Section 4-2-103.

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

R58-7-2. Definitions.

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

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

C. "Representative" means a dealer licensed in Utah under Section 4-7-107 who is a resident of this state, or who is a representative of, or who in any capacity conducts business with a livestock auction market licensed under Section 4-30-105, which does business with an in state or out of state satellite video livestock auction market.

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

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

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

R58-7-3. Livestock Markets.

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

1. Follow procedures outlined in Section 4-30-105, and all state and federal laws and regulations pertaining to livestock health and movement.

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

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

4. Maintain records of animals in the market in accordance with United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Brucellosis Eradication Uniform Methods and Rules, Ch. 1, Part II, 1, G, 2 to 4. Records must be retained for 2 years.

5. Maintain the identity of ownership of all animals as set forth in Section 4-24-402, and these rules. All test eligible females and breeding bulls two years of age and over shall be backtagged for individual identification as outlined in 9 CFR 71.18 71.19 and 9 CFR 79, January 1, 2001, edition. The tags are not to be removed in trading channels.

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

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

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

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

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

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

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

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

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

B. Additional Standards for Approved Markets.

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

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

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

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

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

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

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

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

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

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

5. Failed to comply with any law or rule pertaining to

livestock health or movement, or

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

7. Operated as a livestock market without proper licensing.

E. Relating to temporary livestock market:

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

R58-7-4. Temporary Livestock Sale License.

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

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

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

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

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

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

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

B. A temporary license shall not be required for:

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

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

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

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

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

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

R58-7-5. Dealers.

A. Dealer Licensing and Bonding:

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

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

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

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

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

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

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

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

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

B. Record Keeping.

1. All livestock dealers must keep adequate records to allow accurate trace back of all livestock to the prior owner Section 4-7-109.

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

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

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

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

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

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

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

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

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

B. Balancing the empty scale.

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

1,000 pounds, verification to occur before the weighing of the load of less than 1,000 pounds.

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

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

C. Weighing the load.

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

D. Sale of livestock by weight.

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

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

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

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

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

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

d. other information the commissioner may require as listed in Subsection 4-7-106.

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

a. a license fee in accordance with Section 4-30-105, determined by the department pursuant to Subsection 4-2-103(2).

b. evidence of proper security bonding as required in Subsection 4-30-105(3) for the satellite video auction and Section 4-7-107 for the representative.

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

d. other information the commissioner may require as listed in Section 4-7-106.

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

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

The contract must include a provision authorizing the commissioner or the commissioners designee to have access to the books, papers, accounts, financial records held by financial institutions, accountants or other sources; and other documents relating to the activities of the satellite video livestock market and requiring the satellite video auction market to make such documents reasonably available upon the request of the commissioner or the commissioners designee. If the contract between a representative and the satellite video auction market is terminated, rescinded, breached, or materially altered, the representative and the satellite video auction market shall immediately notify the commissioner. Failure to notify will be deemed failure to keep and maintain suitable records and be deemed to be a false entry or statement of fact in application filed with the department. (Section 4-7-201.)

R58-7-8. Livestock Market Committee.

A. Hearing on License Application; Notice of Hearing.

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

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

B. Guidelines delineated for decision on application shall be in accordance with 4-30-107 and shall apply to the livestock auction market and the satellite video livestock auction market.

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

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32B-2-202(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32B.

(2) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(3) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(4) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(5) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(6) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(7) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

(8) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn, hotel or resort.

(9) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(10) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(11) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(12) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, beer-only restaurant, airport lounge, on-premise banquet premises, reception center, club, recreational amenity on-premise beer retailer, tavern, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(13) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(14) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(15) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(16) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(17) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(18) "WARNING SIGN" means a sign no smaller than eight and one half inches high by eleven inches wide, clearly readable, stating: "Warning: drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child. Call the Utah Department of Health at (insert most current toll-free number) with questions or for more information" and "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health department contact information shall be no smaller than 20 point bold.

R81-1-3. General Policies.

(1) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(2) Manner of Paying Fees.

Payment of all fees for licenses, permits, certificates of approval, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(3) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy, or on the department's website at http://www.abc.utah.gov.

(4) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(5) Returned Checks.

(a) The department will assess a $20 charge for any check payable to the department returned for the following reasons:

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (5)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (5)(b), the department may require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis. The determination of when to put a licensee,

permittee, or package agency operator on "cash only" basis and how long the licensee, permittee, or package agency operator remains on "cash only" basis shall be at the discretion of the department and shall be based on the following factors:

(i) dollar amount of the returned check(s);

(ii) the number of returned checks;

(iii) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the department;

(iv) the time necessary to collect the returned check(s); and

(v) any other circumstances.

(d) A returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the department, require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission.

(e) In addition to the remedies listed in Subsections (5)(a), (b), (c) and (d), the department may pursue any legal remedies to effect collection of any returned check.

(6) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

(7) Administrative Handling Fees.

(a) Pursuant to 32B-4-414(1)(b)a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move if the person obtains department approval before moving the liquor into the state, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(b) Pursuant to 32B-4-414(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains department approval before moving the liquor into the state, the person provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(c) The administrative handling fee to process any request for department approval referenced in subsections (7)(a) and (7)(b) is $20.00.

(8) Case Handling Markup

(a) For purposes of the landed case cost defined in Section 32B-2-304, "cost of the product" includes a case handling markup determined by the department.

(b) If a manufacturer and the Department have agreed to allow the manufacturer to ship an alcoholic beverage directly to a state store or package agency without being received and stored by the Department in the Department's warehouse, the manufacturer shall receive a credit equaling the case handling markup for the product that is not warehoused by the Department.

(c) The Department shall collect and remit the case handling markup as outlined in Utah Code Ann. Section 32B-2-304.

(9) Listing and Delisting Product: Pursuant to 32B-2-202(1) (b) and (k), this rule authorizes the director to make internal department policies in accordance with 32B-2-206(1) (2) and (5) for department duties as defined by 32B- 2-204(1) for listing and de-listing products to include a program to place orders for products not kept for sale by the department.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made as provided in Section 52-4-202.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-202.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32B-2-202(1)(c)(i), 32B-2-202(1) and (3), 32B-2-202(2)(b) and (c), and 32B-3-101 to -207. These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32B-3-101 to -207 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32B-9-204 and -305.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63G, Chapter 4 or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive

months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a $25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $1000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $2000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a $2000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $300 fine

for the officer, employee or agent.

(ii) Second occurrence of the same type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $350 fine for the officer, employee or agent.

(iii) More than two occurrences of the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $700 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32B, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) More than one occurrence of the same type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a $3000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal	Warning Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor					
1st	X	X			
2nd			100 to 500		
3rd			200 to 500	1 to 5	
Over 3			500 to 25,000	6 to	X
Moderate					
1st		X	to 1,000		
2nd			500 to 1,000	3 to 10	
3rd			1,000 to 2,000	10 to 20	
Over 3			2,000 to 25,000	15 to	X
Serious					
1st			500 to 3,000	5 to 30	
2nd			1,000 to 9,000	10 to 90	
Over 2			9,000 to 25,000	15 to	X
Grave					
1st			1,000 to 25,000	10 to	X
Over 1			3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal	Warning Written	Fine $ Amount	Suspension No. of Days
Minor				
1st	X	X		
2nd		X	to 25	
3rd			to 50	1 to 5
Over 3			to 75	6 to 10
Moderate				
1st		X	to 50	
2nd			to 75	3 to 10
3rd			to 100	10 to 20
Over 3			to 150	15 to 30
Serious				
1st			to 300	5 to 30
2nd			to 350	10 to 90
Over 2			to 700	15 to 120
Grave				
1st			to 300	10 to 120
Over 1			to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Examples of mitigating circumstances are:

(i) no prior violation history;

(ii) good faith effort to prevent a violation;

(iii) existence of written policies governing employee conduct;

(iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Examples of aggravating circumstances are:

(i) prior warnings about compliance problems;

(ii) prior violation history;

(iii) lack of written policies governing employee conduct;

(iv) multiple violations during the course of the investigation;

(v) efforts to conceal a violation;

(vi) intentional nature of the violation;

(vii) the violation involved more than one patron or employee;

(viii) the violation involved a minor and, if so, the age of the minor; and

(ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative

Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (January 2012 edition) and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32B-2-202(1)(c)(i)and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63G-4-502.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), and Sections 32B-3-102 to -207.

(e) Penalties.

(i) This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R81-1-24, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32B-4-504.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

(j) Presiding Officers.

(i) The commission or the director may appoint presiding officers to receive evidence in disciplinary proceedings, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(ii) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iv) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32B-1-102 and Title 63G, Chapter 4 apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for

default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63G-4-102(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a presiding officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under section (2)(b)(i);

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the department determines that it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63G-4-202 and -203 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction

under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32B-3-205(1)(c)if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32B-3-205(5) if revocation is sought by the department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the department shall notify the respondent and the presiding officer whether it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the department does not seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the department does seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information

contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32B-3-204(4) and, 63G-4-203(1)(i) containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63G-4-401, -402, -404, and -405 and 32B-3-207.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly

mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63G-4-402, -404, and -405, and 32B-3-207.

(4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. ";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly

outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32B-3-203(3)(b) and (c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant

to Section 32B-3-204(4) and 63G-4-208(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32B-3-207 and 63G-4-403, -404, -405.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63G-4-403, -404, and 405, and Section 32B-3-207.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32B-2-202(1)(c) and (e), and the commission's authority to adjudicate violations of Title 32B.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) A dispensing system is approved by the department if it meets the following minimum requirements:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces;

(b) has a meter which counts the number of pours dispensed; and

(c) The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Licensee Responsibility.

(a) The licensee is responsible for verifying that the system, when initially installed, meets the specifications which listed in subsection (1). Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the approved specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32B-1-102(75) shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, club, or recreational amenity on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license under 32B-8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32B-1-102(92) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash

vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32B who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-12A. Department Training Programs.

(1) Authority and general purpose. This rule is pursuant to 32B-5-405(3) which requires that the department to make rules to develop and implement the retail manager and violation training programs described in 32B-5-405.

(2) Application of the rule.

(a) The requirements for the retail manager and violation training programs described in 32B-5-405.

(b) The department shall accurately identify each individual who takes and completes a training program by maintaining a database in which individual are identified by the last four digits of their social security number.

(c) The department will administer a test to ensure an individual taking a training program is focused and actively engaged in the training material throughout the training program.

(d) The department shall issue a certification card to each individual has completed a training program. Each licensee shall keep a copy of the card on the licensed premise for each individual required to complete the training program.

(e) a fee of $25 will be charged to each individual for participation in a training program to cover the department's cost of providing the training program.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63G-2-204 and 63A-12-104 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63G-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63G-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Grievance Procedures.

(1) Authority and Purpose.

(a) This rule is made under authority of Section 32B-2-202 and 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Alcoholic Beverage Control, 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.

(b) 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 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.

(2) Definitions.

(a) "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.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "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.

(d) "Director" means the head of the division of the Department affected by a complaint filed under this rule.

(e) "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.

(f) "Executive Director" means the executive director of the department.

(g) "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.

(h) "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.

(3) Filing of Complaints.

(a) 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.

(b) 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.

(c) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(d) Each complaint shall:

(i) include the complainant's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desired; and

(v) be signed by the complainant or by his legal representative.

(e) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(f) 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.

(g) 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.

(4) Investigation of Complaints.

(a) 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 R81-1-14(3)(d) and (g) of this rule if it is not made available by the complainant.

(b) 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.

(c) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning 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:

(i) 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;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(5) Recommendation and Decision.

(a) 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.

(b) 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.

(c) 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.

(6) Appeals.

(a) 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.

(b) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(c) 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.

(d) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(e) 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 Planning 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:

(i) 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;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(f) 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.

(g) 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.

(7) Record Classification.

(a) Records created in administering this rule are classified as "protected" under Subsections 63G-2-305(9), (22), (24), and (25).

(b) After issuing a decision under Section R81-1-14(5)or a final decision upon appeal under Section R81-1-14(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.

(a) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R81-1-14(7)(b), classified as "private."

(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.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63G-4-503, and as authorized by Section 32B-2-202, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or

good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

(3) Compliance with subsections (1) and (2) are fundamental licensing requirements, the violation of which will result in the issuance of an Order to Show Cause in accordance with R81-1-6 and action on the license as determined by the commission in accordance with 32B-1-304(2).

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32B-4-510(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32B.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32B-1-102(55), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's

activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32B-3-205, and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32B-4-304 and -510.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63G-3-201 and 32B-2-202.

(3) Procedure. The following procedure shall govern any emergency meeting:

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

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

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, 63G-3-201 and 32B-2-202.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

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

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32B-2-202, and its authority to establish guidelines for the advertising of alcoholic beverages under 32B-4-510.

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32B-4-703 to -705, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32B-4-703 to -705. The laws prohibit a beer industry member, directly or

indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32B-4-704(4). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32B-4-704(4)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32B-4-704(3)(b)(i)(B).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do not apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32B-4-704:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum

of $10.00 per case).

(C) The product will be marked up using the department's standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department's current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

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

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" are as defined in 32B-1-102(48).

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32B-15; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32B-1-104 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32B-2-202 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32B-1-501 to -506 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or social club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or social club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32B-1-102(102).

(b) "Sexually-oriented entertainer" means a person defined in 32B-1-102(93).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or social club.

(b) A tavern or social club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32B-1-502 to -506;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or social club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or social club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or social club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32B-2-202 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) 32B-1-301 to -307 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32B-1-301 to -307 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must submit to a background check to show the person meets the qualifications of those statutory sections as a

condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background checks.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(ii),(iii), and (iv), a person identified in Subparagraph (1)(b) shall consent to a criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.") and the Federal Bureau of Investigation (hereinafter "F.B.I").

(ii) A person identified in Subparagraph (1)(b) who submitted a criminal background check on or after July 1, 2015 shall not be required to submit to a background check if the department can confirm that the individual has maintained a regulatory or employment relationship as outlined in the department's privacy risk mitigation strategy required by 32B-1-307(4)(iv)(b).

(iii) An applicant for an event permit under 32B-9 shall not be required to submit to a background check if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(iv) An applicant for employment with benefits with the department shall be required to submit to a background check if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires background checks(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to a background check in a form acceptable to the department; and

(iv) the applicant stipulates in writing that if a criminal history background report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. and F.B.I. is processing the criminal history report(s).

(d) Upon the department's receipt of the criminal history background report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(e) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of criminal history background report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (e).

(f) An applicant for employment with benefits with the department that requires a background check may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to a background check in a form acceptable to the department;

(iii) the applicant stipulates in writing that if a criminal history background report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

R81-1-27. Label Approvals.

(1) Authority. This rule is pursuant to 32B-1-606(2)(c) and (d) and 32B-1-607 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act, 32A-1-801 to -809.

(2) Purpose.

(a) Pursuant to 32B-1-604, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in 32B-1-604 to -606.

(c) This rule:

(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;

(ii) provides supplemental procedures for applying for and processing label and package approvals;

(iii) defines the meaning of certain terms in the Malted Beverages Act; and

(iv) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

(3) Application of Rule.

(a) The department shall assess a fee of $30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.

(b) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau (Form TTB F5100.31) with the exact size label if printed in color.

(c) Because a heavy beer and flavored malt beverage product may be sold only by the department to consumers and on-premise retailers in this state, label approval for a heavy beer or flavored malt beverage need not be applied for until the department has decided to list the product for sale in this state. Any listing will be contingent on label and packaging approval.

(d) An application for approval is required for any revision of a previously approved label.

(e) An application for approval is required for any revision to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(f) An application for approval is not required for any revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as

temporary seasonal or promotional themes.

(g) Pursuant to 32B-1-605(6):

(i) the department may revoke any label and packaging that does not comply with the label and packaging requirements of the Malted Beverage Act;

(ii) the department may delist any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that does not meet the label and packaging requirements of the Malted Beverage Act;

(iii) any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that did not receive prior label and packaging approval need not submit an application for label and packaging approval if the label and packaging meet the requirements of the Malted Beverage Act.

(h) Pursuant to 32B-1-606, a flavored malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) on the front of the container and packaging;

(iv) in a format that is readily legible;

(v) separate and apart from any descriptive or explanatory information; and

(vi) in a type size no smaller than 3 millimeters wide and 3 millimeters high.

(i) Pursuant to 32B-1-606, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The alcohol content statement may not be abbreviated, but shall use the complete words "alcohol," "volume," or "weight". The words in the alcohol content statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) in a format that is readily legible; and

(iv) separate and apart from any descriptive or explanatory information.

R81-1-28. Special Commission Meetings - Fees.

(1) Authority. This rule is pursuant to 32B-2-201(10) that gives the commission authority to hold special commission meetings; and 32B-2-202(1)that gives the commission authority to establish procedures for granting and denying permits and to prescribe fees payable for permits.

(2) Purpose. This rule authorizes the commission to assess an administrative fee in addition to the regular permit fee to cover the additional administrative costs of convening a special commission meeting to consider the application of an applicant for a single event permit or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.

(3) Application of Rule.

(a) If the commission agrees to convene a special commission meeting to accommodate an applicant described in Section (2), the commission shall assess an administrative fee of $350 in addition to the regular permit fee.

(b) The administrative fee in Section (3)(a) shall be used to offset the costs of convening the special meeting including, but not limited to:

(i) department costs associated with scheduling, arranging, and providing notice of the special meeting;

(ii) department costs associated with any emergency or electronic meeting held pursuant to R81-1-19 and -20;

(iii) payment of per diem and expenses to commissioners; and

(iv) any other costs incurred.

(c) The administrative fee in Section (3)(a) shall be paid prior to the convening of the special commission meeting.

(d) The administrative fee in Section (3)(a) is a non-refundable fee.

R81-1-29. Factors for Granting Licenses.

(1) Definition. For purposes of this rule, "license" includes a license, permit, certificate of approval, and package agency.

(2) Authority. This rule is pursuant to 32B-2-202(1)(c)which gives the commission the authority to set policy by written rules that establish criteria and procedures for granting a license. It is also based on 32B-5-203(2)(f) that gives the commission the authority to consider non-statutory factors or circumstances the commission considers necessary in granting a license.

(3) Purpose. This rule provides a list of non-statutory factors the commission considers in granting a license.

(4) Application of Rule. In addition to any statutory factor for granting a license, the commission also may consider the following non-statutory factors:

(a) availability of retail licenses under a quota;

(b) length of time the applicant has waited for a retail license;

(c) the scheduled opening date;

(d) whether the applicant is a seasonal business;

(e) whether the location has been previously licensed or is a new location;

(f) whether the application involves a change of ownership of an existing location;

(g) whether the applicant holds other alcohol licenses at this or other locations;

(h) whether the applicant has a violation history or a pending violation;

(i) projected alcohol sales as it relates to the extent to which the retail alcohol license will be utilized;

(j) whether the applicant is a small or entrepreneurial business that would benefit the community in which it would be located;

(k) nature of entertainment the applicant proposes; and

(l) public input in support or opposition to granting the retail license.

R81-1-30. Draft Beer Sales/Minors on Premises.

A state license that authorizes the sale of beer on the premises also authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32B-1-102(112). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.

R81-1-31. Duties of Commission Subcommittees.

(1) This rule is promulgated pursuant to Section 32B-2-201.5 and shall govern the duties of the two commission subcommittees, Compliance Licensing and Enforcement Subcommittee and the Operations and Procurement Subcommittee.

(2) The Compliance Licensing and Enforcement Subcommittee will review and discuss items related to

compliance, licensing and enforcement and make recommendations to the full commission on those items.

(3) The Operations and Procurement Subcommittee will review and discuss items related to operations and procurement and make recommendations to the full commission on those items.

(4) If a quorum of the full commission is present, the subcommittee may act on all agenda action items.

(5) If a quorum of the full commission is not present, a recommendation on action items can be presented to a quorum of the commission for action without discussion if:

(a) A quorum of the subcommittee is present;

(b) There is a unanimous vote on the recommendation; and

(c) A member of the full commission does not request discussion on the items of recommendation.

(6) A subcommittee quorum is the majority of standing members.

R81-1-32. Further Application.

(1) If an applicant has at any time been denied a license or permit based on the locality within which the proposed licensed premises is located, no further application from the applicant pertaining to the same premises or building location shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(2) If an applicant has at any time been denied a license or permit based on the person's ability to manage and operate a retail license of the type for which the person is applying, no further application from the applicant shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(3) If an applicant has at any time been denied a license based on the nature or type of retail operation of the proposed retail licensee, no further application shall be considered for that license type unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(4) If an applicant has at any time been denied a license or permit based on any other factor the commission considers necessary, the commission may, in its discretion determine under what circumstances in which a further application will be considered.

(5) The commission may prescribe a time period between the denial and hearing a request for further application.

KEY: alcoholic beverages
December 28, 2017 **32B-2-201(10)**
Notice of Continuation May 2, 2016 **32B-2-202**
32B-2-204
32B-2-206
32B-3-203(3)(c)
32B-3-205(2)(b)
32B-5-304
32B-1-305
32B-1-306
32B-1-307
32B-1-607
32B-1-304(1)(a)
32B-6-702
32B-6-805(3)
32B-9-204(4)
32B-4-414(1)(b) and ©

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-1. Licensing.

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

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state recreational amenity on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 through -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4A-2. Application.

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

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a full service restaurant, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-206 (requirements for a master full service restaurant license); and

(b) the department has inspected the restaurant premise(s).

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

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

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

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205.

(4) Applicants may apply for a Master Full Service Restaurant License as defined by 32B-6-206 so long as five or more locations are indicated as sublicenses on the application.

(a) The five locations must be owned by the same person or entity.

(b) Locations that do not already have a full service restaurant license must meet all requirements for licensing as a full service restaurant under subsection (1).

(c) Once the master license is granted, the licensee may add additional locations by filing an application approved by the department demonstrating that the location meets all application requirements under section (1).

R81-4A-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-204(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4A-4. Insurance.

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

R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.

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

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

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

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

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

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

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

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

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

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

R81-4A-6. Restaurant Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-205(6). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

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

(1) Alcoholic beverages (including light beer) may be furnished after the licensee or their employee confirms that the patron has the intent to order food that is prepared and sold for consumption on site. An order for food may not include food items normally provided to patrons without charge. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-205(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-205(7).

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

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

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

R81-4A-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

R81-4A-9. Alcoholic Product Flavoring.

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

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

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

R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be

opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-4A-11. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

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

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

(1) Contents of Alcoholic Beverage Menu.

(a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

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

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

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

R81-4A-13. Identification Badge.

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

R81-4A-14. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

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

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

R81-4A-15. Grandfathered Bar Structures.

(1) Authority 32B-1-102; 32B-6-202; and 32B-6-205.3.

(2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 2.

(3) Definitions.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-202(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-202(1)(b) means that:

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

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

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

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

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

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

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

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

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

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

(e) "remodels the grandfathered bar structure or dining area" for purposes of 32B-6-205.3(4)(a)(ii) means that:

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

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

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

(f) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

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

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

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

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

(ii) a remodel of a "grandfathered bar structure or dining area".

KEY: alcoholic beverages

December 28, 2017	**32B-1-607**
Notice of Continuation May 2, 2016	**32B-2-202**
	32B-5-303(3)
	32B-6-202
	32B-6-206
	32B-6-205.3

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-1. Licensing.

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

(2) A limited restaurant license that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same limited restaurant licensee must separately apply for a state on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 to -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Limited restaurant licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the limited restaurant premises shall be deemed to remain on the floor plan of the limited restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4C-2. Application.

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

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-304 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a limited restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-306 (requirements for a master limited service license); and

(b) the department has inspected the limited restaurant premise.

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

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

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

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32B-5-205.

(4) Applicants may apply for a Master Limited Service Restaurant License as defined by 32B-6-306 so long as five or more locations are indicated as sublicenses on the application.

(a) The five locations must be owned by the same person or entity.

(b) Locations that do not already have a limited service restaurant license must meet all requirements for licensing as a limited service restaurant under subsection (1).

(c) Once the master license is granted, the licensee may add additional locations by filing an application approved by the department demonstrating that the location meets all application requirements under section (1).

R81-4C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-304(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4C-4. Insurance.

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

R81-4C-5. Limited Restaurant Licensee Wine and Heavy Beer Order and Return Procedures.

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

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

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

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

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

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

R81-4C-6. Limited Restaurant Licensee Operating Hours.

Allowable hours of wine and heavy beer sales shall be in accordance with Section 32B-6-305(6). However, the licensee may open the wine and heavy beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

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

(1) Alcoholic beverages (including light beer) may be furnished after the licensee or their employee confirms that the

patron has the intent to order food that is prepared and sold for consumption on site. An order for food may not include food items normally provided to patrons without charge. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-305(4), shall be commenced upon the patron's first purchase and shall be maintained by the limited restaurant during the course of the patron's stay at the limited restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The limited restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-305(7).

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

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

(3) Wine dispensing shall be in accordance with Section 32B-5-304(2); and R81-1-11 (Multiple-Licensed Facility Storage and Service) of these rules.

R81-4C-8. Alcoholic Product Flavoring.

(1) Limited restaurant licensees may use alcoholic product flavorings including spirituous liquor products in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

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

R81-4C-9. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the limited restaurant or carried in by a patron. The wine may be opened and poured by the server.

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

R81-4C-10. Consumption at Patron's Table, Counter, and Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

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

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

(1) Contents of Alcoholic Beverage Menu.

(a) Each limited restaurant licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all wine, heavy beer, and beer. This list shall include any charges for the service of packaged wines or heavy beer.

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

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

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

R81-4C-12. Identification Badge.

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

R81-4C-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed limited restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own wine, heavy beer or beer under the following circumstances:

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

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

R81-4C-14. Grandfathered Bar Structures.

(1) Authority 32B-1-102; 32B-6-302; and 32B-6-305.3.

(2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 3.

(3) Definitions.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-302(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-302(1)(b)means that:

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

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

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

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

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

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

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

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

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

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

(e) "remodels the grandfathered bar structure or dining area" for purposes of 32B-6-305.3(4)(a)(ii) means that:

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

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

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

(f) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

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

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

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

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

(ii) a remodel of a "grandfathered bar structure or dining area".

KEY: alcoholic beverages
December 28, 2017 **32B-2-202**
Notice of Continuation July 10, 2013 **32B-5-303(3)**
32B-6-207
32B-6-301 through 305.1

R81. Alcoholic Beverage Control, Administration.
R81-10. Off-Premise Beer Retailers.
R81-10-1. Separation of Alcoholic Beverages from Non-Alcoholic Beverages and Required Signage.

(1) Authority and General Purpose. This rule is pursuant to 32B-7-202(5) that requires:

(a) an off-premise beer retailer to prominently post in the separate and distinct area where beer is sold, an easily readable sign that reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully," and requires the commission to define by rule the format of the sign.

(2) Application of the Rule.

(a) Sign requirements.

(i) The sign required by 32B-7-202(5) must be:

(A) prominently posted in the area where beer is sold;

(B) easily readable;

(C) in print that is no smaller than .5 inches, bold type.

(ii) The print on the sign must be clearly readable and on a solid, contrasting background.

(iii) The size of the sign, and the size of the print must be sufficiently large so as to be readable, and clearly and unambiguously convey to a consumer that the beverage products displayed in that area contain alcohol. In no instance may the sign be smaller than 8.5 inches x 3.5 inches.

(iv) Additional signs may be necessary depending on the size and type of display area. For example, an entire aisle devoted to beer products may require more than one sign to adequately inform the consumer.

R81-10-2. Off-Premise Beer Retailer State License.

(1) Authority and General Purpose. This rule is pursuant to 32B-7-401 that requires:

(a) the commission establish a deadline for each off-premise beer retailer in operation on July 1, 2018 to submit an application for an off-premise beer retailer state license.

(2) Application of the Rule.

(a) An off-premise beer retailer in operation on July 1, 2018 must submit a complete application for an off-premise beer state license by October 10, 2018.

(i) An off-premise beer retailer is considered "in operation as of July 1, 2018" if they have all local licensing in place and are open to the public.

(ii) A "complete application" includes the department's application form and all supplemental materials listed on the department's application checklist.

KEY: alcoholic beverages
December 28, 2017 **32B-1-102**
Notice of Continuation May 31, 2013 **32B-7-202**
32B-7-401

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

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

R81-10C-2. Application.

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

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-904 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a beer-only restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the beer-only restaurant premise.

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

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

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

R81-10C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-904(4) may be withdrawn during the time the license is in effect. If the beer-only restaurant licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10C-4. Insurance.

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

R81-10C-5. Identification Badge.

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

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

(1) Beer may be furnished after the licensee or their employee confirms that the patron has the intent to order food that is prepared and sold for consumption on site. An order for food may not include food items normally provided to patrons without charge. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-905(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-905(7).

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

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

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

R81-10C-7. Alcoholic Product Flavoring.

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

(1) Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

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

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

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

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

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

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

R81-10C-10. Grandfathered Bar Structures.

(1) Authority 32B-1-102; 32B-6-902; and 32B-6-905.2.

(2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 9.

(3) Definitions.

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

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

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

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

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

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

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

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

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

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

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

(d) "remodels the grandfathered bar structure or dining area" for purposes of 32B-6-905.2 means that:

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

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

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

(e) "remodels the grandfathered bar structure or dining area " does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

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

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

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

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

(ii) a remodel of a "grandfathered bar structure or dining area".

KEY: alcoholic beverages
December 28, 2017 32B-2-202
Notice of Continuation September 28, 2016 32B-5
32B-6-901 through 905

R152. Commerce, Consumer Protection.
R152-34. Postsecondary Proprietary School Act Rules.
R152-34-1. Purpose.

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

R152-34-2. References.

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study, including online and distance education programs.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the Division that specifies a stated period for an institution to correct stipulated deficiencies, but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the Division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, in accordance with Section 13-34-113.

(9) "Suspension" means a negative action of the Division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Programs must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on:

(i) transfer of credit from other accredited and recognized institutions,

(ii) recognized proficiency exams (CLEP, AP, etc.), and/or

(iii) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection (B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Title 53A Chapter 11, Utah Code Annotated; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans;

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions;

(u) A statement of the institution's surety or surety exemption status with the Division; and

(v) Such other information as the Division may reasonably require.

R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(1)(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset. The institution shall submit a sworn statement in a form specified by the Division attesting to the religious nature of the education offered.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the Division upon request.

(4) To qualify for exemption under Section 13-34-105(1)(f):

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) To qualify for exemption under Section 13-34-105(1)(c):

(a) the profession for which the review program is offered must be recognized by a state or national licensing or certifying body;

(b) the students enrolled in the review program must previously complete education and/or training in the occupation or field required to be obtained by the certifying body; and

(c) the professional review program must provide only review and preparation for exams or other certifying tests that are required to be passed by the certifying body.

(6) The Division shall determine an institution's status in accordance with the categories contained in this section.

(7) An exempt institution shall notify the Division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(8) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34- 106.

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students;

(c) The name of the agent authorized to respond to student inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus;

(j) A statement that it maintains adequate insurance continuously in force to protect its assets;

(k) A disclosure as required by R152-34-7(1);

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and

methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) Financial information, as described in Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the Division.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) In accordance with U.C.A. Section 13-34-107(5), applicants shall pay registration fees established by the Division pursuant to U.C.A. Section 63J-1-504.

(2) The institution shall submit to the Division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(3) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of $25 for each month or part of a month during which the registration remains lapsed.

(4) One year after issuance, an institution shall submit a review on a form provided by the Division and pay a fee as determined in Subsection (1) above. The review will evaluate an institution's financial information, surety requirements and the following statistical information:

(a) The number of students enrolled for the previous one-year period of registration;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated their registration or withdrew from the institution;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(5) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(6) The Division shall refuse to register an institution if the Division determines the following:

(a) the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) the violation(s) are relevant to the appropriate operation of the school; and

(c) there is reasonable doubt that the institution will provide students with an appropriate learning experience or that the institution will function in accordance with all applicable laws and rules.

(7) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the Division shall do one of the following:

(a) issue a certificate of registration;

(b) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(8) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than fifty percent (50%) of its assets within a three-year period. When this occurs, the following information shall be submitted to the Division:

(a) a copy of any new articles of incorporation;

(b) a current financial statement;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit shall be provided by the institution before a certificate of registration will be issued by the Division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit shall be in a form approved by the Division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit shall be payable to the Division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the Division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the Division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operations shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of Section R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the Division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the Division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the Division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five- hundred dollars ($187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars ($125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five- hundred dollars ($62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the Division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars ($25,000) may provide a surety of twelve thousand, five hundred dollars ($12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest $1,000), with a minimum surety amount of twelve thousand, five hundred dollars ($12,500) and a maximum surety amount of three hundred thousand dollars ($300,000).

(b) The surety shall be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The Division may require that such statement be verified by an independent certified public accountant if the Division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The Division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the Division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice. Tuition paid to an institution, and related student loans, are consumer transactions as defined in Utah Code Title 13, Chapter 11.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period during which time the student may rescind the contract and receive a refund of all money paid. The cooling-off period may not end prior to midnight of the third business day after the latest of the following days:

(i) the day the student signs an enrollment agreement;

(ii) the day the student pays the institution an initial deposit or first payment toward tuition and fees; or

(iii) the day that the student first visits the institution, if the program lasts more than 30 consecutive calendar days.

(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling-off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than $200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three-business-day cooling-off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s),at any one time, to the institution for tuition and fees to four months of training, plus registration or start-up costs not to exceed $200 or an alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:

(i) the student directly; or

(ii) a lender or any other entity on behalf of the student.

(g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:

(i) under any provision of:

(A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;

(B) the Postsecondary Proprietary School Act Rules, R152-34; or

(C) a contract or other agreement between the institution and the person requesting the refund; or

(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) Institutions shall disclose that they are primarily operated for educational purposes if this is not apparent from the legal name. Institutions shall not advertise educational services in conjunction with any other business or establishment, nor in "help wanted" or "employment opportunity" columns of newspapers, magazines or similar forums in such a way as to lead readers to believe that they are applying for employment rather than education and training. Any advertisement in "help wanted" or "employment opportunity" forums shall be for positions open for immediate employment only;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The Division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(h) An institution shall include the following registration and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:

(i) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

(ii) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

(iii) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.

R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34- 109.

(1) Should an institution cease operations or otherwise discontinue its educational activities, it shall immediately notify the Division in writing 30 days prior to closing. The chief administrative officer shall send formal written notice to the Division; this notice shall include:

(a) The date on which the institution will officially close;

(b) A written plan for access to and preservation of permanent records;

(c) What actions the institution plans to take in regards to its students; and

(d) In the event an institution closes with students enrolled who have not completed their programs, a list of such students, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the Division, with all particulars.

(2) Once an institution has notified the Division of its intent to cease operations, it shall not advertise, recruit, offer or otherwise enroll new students into its programs.

(3) School records consist of the following permanent scholastic records for all students who are admitted, withdrawn or terminated:

(a) entrance application and admission acceptance information;

(b) attendance and performance information, including transcripts which shall at a minimum include the program in which the student enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates; and

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.

(4) An institution that closes or otherwise discontinues operations shall maintain its surety required under R152-34-7(11) and/or R152-34-7(12) until:

(a) At least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(b) The institution has satisfied the closure requirements of this section by providing documentation acceptable to the Division to show that it has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

(5) Within ten (10) business days after the closure, the institution shall provide the Division with all the information outlined above and in accordance with Section 13-34-109, including copies of student transcripts.

R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.

(1) The Division may perform on-site evaluations to verify

information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The Division may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the Division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(i) failure to comply with the Postsecondary Proprietary School Act or these rules;

(j) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(k) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(l) failure to provide reasonable information to the Division as requested from time to time.

(3) A violation of these administrative rules is also a violation of the Utah Consumer Sales Practices Act and accompanying administrative rules.

R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34- 201.

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary schools, registration, consumer protection
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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) "Clinic" as used in Subsection 58-17b-625(3)(b) means a class B pharmacy, or a facility which provides out-patient health care services whose primary practice includes the therapeutic use of drugs related to a specific patient for the purpose of:

(a) curing or preventing the patient's disease;

(b) eliminating or reducing the patient's disease;

(c) arresting or slowing a disease process.

(9) "Co-licensed partner" means a person that has the right to engage in the manufacturing or marketing of a co-licensed product.

(10) "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.

(11) "Community pharmacy" as used in Subsection 58-17b-625(3)(b) means a class A pharmacy as defined in Subsection 58-17b-102(10).

(12) "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.

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

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

(15) "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.

(16) "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."

(17) "DMP" means a dispensing medical practitioner licensed under Section 58-17b, Part 8.

(18) "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.

(19) "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.

(20) "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.

(21) "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.

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

(23) "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.

(24) "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.

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

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

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

(28) "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.

(29) "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.

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

(31) "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.

(32) "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".

(33) "Long-term care facility" as used in Section 58-17b-610.7 means the same as the term is defined in Section 58-31b-102.

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

(35) "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".

(36) "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.

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

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

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

(40) "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.

(41) "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.

(42) "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).

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

(44) "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.

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

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

(47) "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.

(48) "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.

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

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

(51) "Refill" means to fill again.

(52) "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.

(53) "Research facility" means a facility where research takes place that has policies and procedures describing such research.

(54) "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.

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

(56) "Supervisor" means a licensed pharmacist or DMP in good standing with the Division.

(57) "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.

(58) "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.

(59) "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.

(60) "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.

(61) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 40-NF 35), either First Supplement, dated August 1, 2017, or Second Supplement, dated December 1, 2017, which is hereby adopted and incorporated by reference.

(62) "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.

(63) "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.

In accordance with Subsection 58-17b-303(1)(g), the following standards are established for the pharmacy internship required for licensure as a pharmacist:
(1) For graduates of all U.S. pharmacy schools:
(a) 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.

(b) Introductory pharmacy practice experiences (IPPE) shall account for not less than 300 hours over the first three professional years.

(c) A minimum of 150 hours shall be balanced between community pharmacy and institutional health system settings.

(d) 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.

(e) Required experiences shall:

(i) include primary, acute, chronic, and preventive care among patients of all ages; and

(ii) develop pharmacist-delivered patient care competencies in the community pharmacy, hospital or health-system pharmacy, ambulatory care, inpatient/acute care, and general medicine settings.

(f) 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.

(g) 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.

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

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

(j) 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.

(k) 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.

(2) For graduates of all foreign pharmacy schools, at least 1,440 hours of supervised pharmacy practice in the United States.

(3) Up to 500 hours towards the requirements of Subsections (1)(a) or (2) may be granted, at the discretion of the Division in collaboration with the Board, for other experience substantially related to the practice of pharmacy.

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-610.6. Hospital Pharmacy Dispensing Prescription Drugs to Patients at Discharge to Meet a Patient's Immediate Needs.

In accordance with Section 58-17b-610.6, the guidelines for a hospital pharmacy to dispense to an individual who is no longer a patient, on the day discharged from the hospital setting, are established in this section.

(1) The prescription drug shall be dispensed:

(a) during regular inpatient hospital pharmacy hours, by a pharmacist; or

(b) outside of regular inpatient hospital pharmacy hours, by the prescribing practitioner using an appropriately labeled pre-packaged drug.

(2) Labeling for a prescription under Section 58-17b-610.6 shall at a minimum include:

(a) prescribing practitioner's name, facility name, and telephone number;

(b) patient's name;

(c) name and strength of medication;

(d) date given;

(e) instructions for use; and

(f) beyond use date.

(3) Applicable data of controlled substances dispensed shall be reported to the Utah Controlled Substance Database.

R156-17b-610.7. Partial Filling of a Schedule II Controlled Substance Prescription.

In accordance with Section 58-17b-610.7, a pharmacy that partially fills a prescription for a Schedule II controlled substance shall specify by prescription number for each partial fill the:

(a) date;

(b) quantity supplied; and

(c) quantity remaining of the prescription partially filled.

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 responsibility to ensure that:

(a) user access to the system is assigned, discontinued or changed according to employment status and credentials;

(b) access to the medications comply with state and federal regulations; and

(c) 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-621a. Operating Standards - Pharmacist Administration of a Long-acting Injectable Drug Therapy - Training.

In accordance with Subsections 58-17b-502(9) and 58-17b-625(2):

(1) Training for a pharmacist to administer long-acting injectables intramuscularly shall include successful completion of:

(a) current Basic Life Support (BLS) certification; and

(b) a training program for administering long-acting injectables intramuscularly that is provided by an ACPE accredited provider.

(2) An individual who engages in the administration of long-acting injectables intramuscularly shall:

(a) maintain documentation that the required training was obtained prior to any administration; and

(b) for each renewal cycle after the initial training, successfully complete a minimum of two hours of continuing education related to long-acting injectables.

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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Notice of Continuation January 5, 2015	**58-17b-601(1)**
	58-37-1
	58-1-106(1)(a)
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-24b. 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 a manual therapy technique comprising a continuum of skilled passive movements to the joints and/or related soft tissues that are applied at varying speeds and amplitudes, including a small-amplitude/high velocity therapeutic movement.

(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)(d), (2)(d) and (3)(d), 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 "Request for Authorization to Test" as a physical therapist or physical therapist assistant, and is authorized to sit for 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 trigger point dry needling 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).

(2) In accordance with Subsection 58-24b-505(1)(e) and (2)(b), the approved course and supervised patient treatment sessions shall be completed no later than three calendar years from the start of the course.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

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	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) "Completed a PN, RN, or APRN pre-licensing program" means graduation from the pre-licensing program, verified by official transcripts showing degree and date of program completion.

(10) "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.

(11) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(12) "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(10) and (14).

(13) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(14) "Delegator" means a person who assigns to another the authority to perform a task on behalf of the person.

(15)(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.

(16) "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.

(17) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(18) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(19) "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.

(20) "LPN" means licensed practical nurse.

(21) "MAC" means medication aide certified.

(22) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(23) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(24) "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.

(25) "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.

(26) "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).

(27) "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.

(28) "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.

(29) "PN" means an unlicensed practical nurse.

(30) "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.

(31) "Practica" means working in the nursing field as a student; not exclusive to patient care activities.

(32) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(33) "RN" means a registered nurse.

(34) "School" means any private or public institution of primary or secondary education, including a charter school, preschool, kindergarten, or special education program.

(35) "Supervision" is as defined in Subsection R156-1-102a(4).

(36) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b is further defined in Section R156-31b-502.

R156-31b-103. Authority -- Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the 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 for licensure as an APRN 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 for nurse practitioner, clinical nurse specialist, certified nurse midwife, or registered nurse anesthetist, pursuant to Section R156-31b-301e, and administered by a certification body approved by:

(i) the National Commission for Certifying Agencies; or

(ii) the Accreditation Board for Specialty Nursing Certification;

(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.

If an applicant's prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, the applicant shall demonstrate:

(1)(a) within the year preceding the date of the application, the applicant successfully completed all three components of the CGFNS Certification Program and the credentials evaluation service professional report; and

(b) within five years preceding the date of the application, the applicant met at least one of the following practice requirements:

(i) completed the nursing education program;

(ii) worked as a nurse;

(iii) completed an approved re-entry program; or

(iv) obtained an advanced (baccalaureate, master's or doctorate) nursing degree from an accredited nurse education program; or

(2)(a) during the five years preceding the date of the application, the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States; and

(b) prior to the date of the application, the applicant achieved a passing score on an English proficiency test satisfying current CGFNS requirements.

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, Certified Nurse Midwife, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the approved 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-502.5, 58-31b-801, Subsection 58-31b-102(1), and Section R156-31b-502, 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

(ss) Administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-31b-502.5(1):
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

(tt) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-31b-502.5(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

(uu) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-31b-502.5(3):
first offense: $5,000
second offense: $10,000
ongoing offense(s): $2,000 per day but not less than the second offense

(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 R156-37-502(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 in a school setting:
(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 in Utah.

(c) An APRN who wishes to practice as an RN in a Compact state must reinstate, 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 11, 2017	**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) "Principl 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) "SBIRT training" means training in the Screening, Brief Intervention, and Referral to Treatment approach used by the federal Substance Abuse and Mental Health Services Administration, as defined in Subsection 58-37-6.5(1)(3).

(6) "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 58-37-6.5(2)(b), 58-37-6.5(5), 58-37-6.5(7), and 58-37-6.5(8), the controlled substance prescribing classes and SBIRT training 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 oneself 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 that the prescriber 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; or

(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 this rule; Title 58, Chapter 37, the Utah Controlled Substances Act; or federal law during regular business hours and at other reasonable times in the event of an emergency, their:

(1) controlled substance stock or inventory;

(2) records required under the Utah Controlled Substances

Act, this rule, or Federal controlled substance laws; and

(3) 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:

(a) file the appropriate forms with the Drug Enforcement Administration, with a copy to the Division directed to the attention of the Investigation Bureau; and

(b) 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 records in any way, those records 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.

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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) "Null report" means the same as zero report.

(7) "ORI" means Originating Agency Identifier Number.

(8) "Point of sale date", "POS date", or "Date Sold" means the date the prescription drug left the pharmacy (not the date the prescription drug was filled, if the dates differ). ASAP Version 4.2 uses the "DSP17" field to identify the point of sale date.

(9) "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.

(10) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

(11) "Rx" means a prescription.

(12) "Zero report" means a report containing the data fields required by Subsection R156-37f-203(5), indicating that no controlled substance required to be reported has been dispensed since the previous submission of data.

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) In accordance with Subsection 58-37f-203(1), each pharmacy or pharmacy group shall submit the data required in this section on a daily basis, either in real time or daily batch file reporting. The submitted data shall be from the point of sale date.

(a) 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.

(b) If the data is submitted by a pharmacy group, the data shall be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group shall be submitted in chronological order according to the date each prescription was filled.

(2) In accordance with Subsections 58-37f-203(2), (3), and (6), the data required by this section 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 administrator prior to submission.

(3) In accordance with Subsections 58-37f-203(2), (3), and (6), the format used for submission to the Database shall be Version 4.2 of the American Society for Automation in Pharmacy (ASAP) Format for Controlled Substances. The Division may approve alternative formats substantially similar to this standard.

(4) In accordance with Subsection 58-37f-203(6), the pharmacist identified in Subsections 58-37f-203(2) and (3) shall provide the following data fields to the Division:

(a) version of ASAP used to send transaction (ASAP 4.2 code = TH01);

(b) transaction control number (TH02);

(c) date transaction created (TH05);

(d) time transaction created (TH06);

(e) file type (production or test) (TH07);

(f) segment terminator character (TH09);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) identifier assigned to reporting pharmacy assigned by NCPDP/NABP (PHA02);

(j) DEA registration number of dispensing pharmacy (PHA03);

(k) patient last name (PAT07);

(l) patient first name (PAT08);

(m) patient address (PAT12);

(n) patient city of residence (PAT14);

(o) patient zip code (PAT 16);

(p) patient date of birth (PAT18);

(q) dispensing status - new, revised, or void (DSP01);

(r) prescription number (DSP02);

(s) date prescription written by prescriber (DSP03);

(t) number of refills authorized by prescriber (DSP04);

(u) date prescription dispensed at dispensing pharmacy (DSP05);

(v) if current dispensed prescription is a refill, number of the refill (DSP06);

(w) product identification qualifier (DSP07);

(x) NDC 11-digit drug identification number (DSP08);

(y) quantity of drug dispensed in metric units (DSP09);

(z) days supply dispensed (DSP10)

(aa) date drug left the pharmacy (DSP17);

(bb) DEA registration number of prescribing practitioner (PRE02);

(cc) state that issued identification of individual picking up dispensed drug (AIR03);

(dd) type of identification used by individual picking up dispensed drug (AIR04);

(ee) identification number of individual picking up dispensed drug (AIR05);

(ff) last name of individual picking up dispensed drug (AIR07);

(gg) first name of individual picking up dispensed drug (AIR08);

(hh) dispensing pharmacist last name (AIR09);

(ii) dispensing pharmacist first name (AIR10);

(jj) number of detail segments included for the pharmacy (TP01);

(kk) transaction control number (TT01); and

(ll) total number of segments included in the transaction (TT02).

(5) In accordance with Subsection 58-37f-203(6), if no

controlled substance required to be reported has been dispensed since the previous submission of data, then the reporting pharmacist in charge shall submit a zero report to the Division, which shall include the following data fields:

(a) version of ASAP used to send transaction (TH01);

(b) transaction control number (TH02);

(c) transaction type (value 1: send/request transaction) (TH03);

(d) date transaction created (TH05);

(e) time transaction created (TH06);

(f) file type (production or test) (TH07);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) free form message (IS03);

(j) National Provider Identifier (PHA01);

(k) patient last name = "Report" (PAT07);

(l) patient first name = "Zero" (PAT08);

(m) date prescription dispensed at dispensing pharmacy (DSP05);

(n) number of detail segments included for the pharmacy (TP01);

(o) transaction control number (TT01); and

(p) total number of segments included in the transaction (TT02).

(6) In accordance with Subsection 58-37f-203(2), 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:

(a) The waiver or certification must be resubmitted at the end of each calendar year.

(b) If a pharmacy or pharmacy group that has submitted a waiver or certification under this Subsection dispenses a controlled substance:

(i) the waiver or certification shall immediately and automatically terminate;

(ii) 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

(iii) the Database reporting requirements shall apply 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) An applicant to become a registered user of the Database shall apply for an online account and user name only under the specific subparagraph in Subsection 58-37f-301(2) under which he or she qualifies.

(b) A registered user shall not permit another person to have knowledge of or use the registered user's assigned password or PIN.

(3)(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.

(4) 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;

(5)(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 csd@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).

(6) 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.

(7)(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 (18).

(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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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 must:

(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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R156. Commerce, Occupational and Professional Licensing.
R156-63a. Security Personnel Licensing Act Contract Security Rule.
R156-63a-101. Title.

This rule is known as the "Security Personnel Licensing Act Contract Security Rule."

R156-63a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means a basic education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63a-602; and

(b) has the content required by Section R156-63a-603.

(2) "Approved basic firearms training program" means a firearms education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63a-602; and

(b) has the content required by Section R156-63a-604.

(3) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(4) "Contract security company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom the peace officer is employed.

(5) "Contract security company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well-being of personnel employed by, or animals owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(viii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Corporate officer" as defined in Subsection 58-63-102(9), includes an individual who is on file with the Division of Corporations and Commercial Code as a limited liability company's company officer or "governing person" as defined in Subsection 48-3a-102(7), or as a limited partnership's "general partner" as defined in Subsection 48-2e-102(8).

(9) "Employee" means an individual providing services in the security guard industry for compensation, when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(10) "Instructor" means a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, who has fulfilled the instructor experience and training requirements set forth in Section R156-63a-602.

(11) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63a-304.

(12) "Qualifying agent" means a natural person who meets all of the requirements set forth in Subsection 58-63-302(1)(c).

(13) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or contract security company logo that clips on to or is placed over the front pocket.

(14) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(15) "Supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(16) "Trainer" has the same meaning as "instructor".

(17) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-63a-502.

R156-63a-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 63.

R156-63a-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.

R156-63a-201. Advisory Peer Committee created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Security Services Licensing Board, consisting of:

(a) one member who is a corporate officer, director, manager or trainer of a contract security company;

(b) one member who is a corporate officer, director, manager or trainer of an armored car company;

(c) one member who is an armored car security officer or a contract security officer;

(d) one member representing the general public; and

(e) one member who is a trainer, and who is also, in order of preference:

(i) a member of the Utah Peace Officers Association;

(ii) a qualifying agent of a licensed security company that is in good standing with the Division; or

(iii) a member of a security association that is in good standing wit the Utah Division of Corporations.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities regarding the acceptability of educational programs, requesting approvals from the Division, and periodically reviewing all approved basic education and training programs and approved basic firearms training programs regarding current curriculum requirements.

(3) The Education Advisory Committee shall consider, when advising the Board of the acceptability of an education and training program:

(a) whether in keeping with Subsections R15663a-102(1) and (2), or Subsections R156-63b-102(1) and (2), a proposed basic education and training program meets:

(i) the operating standards of Sections R156-63a-602 or

R156-63b-602; and

(ii) the content requirements of Sections R156-63a-603 or R156-63b-603; and

(b) whether a proposed basic firearms training program meets:

(i) the operating standards of Sections R156-63a-602 or R156-63b-602; and

(ii) the content requirements of Sections R156-63a-604 or R156-63b-604.

R156-63a-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) two fingerprint cards for each of the applicant's:

(i) qualifying agent;

(ii) corporate officers;

(iii) directors;

(iv) equity holders or shareholders owning more than 5% of the equity or outstanding shares;

(v) partners;

(vi) proprietors; and

(vii) responsible management personnel; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each of the persons required to provide a fingerprint card under Subsection (1)(a) above.

(2) An application for licensure as an armed or unarmed private security officer shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records for the applicant with:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

(3) Applications for change in licensure classification from unarmed to armed private security officer shall only require the following additional documentation:

(a) successful completion of an approved basic firearms training program; and

(b) an additional criminal history background check pursuant to Section 58-63-302 and Subsection R156-63a-302a(2).

R156-63a-302b. Qualifications for Licensure - Basic Education and Training Requirements.

(1) In accordance with Subsections 58-1-203(1)(b), 58-63-302(2)(g), and 58-63-302(2)(h), an applicant for licensure as an armed private security officer shall successfully complete:

(a) an approved basic education and training program, as defined in Subsection R156-63a-102(1); and

(b) an approved basic firearms training program, as defined in Subsection R156-63a-102(2).

(2) In accordance with Subsections 58-1-203(1)(b) and 58-63-302(3)(f), an applicant for licensure as an unarmed private security officer shall successfully complete an approved basic education and training program, as defined in Subsection R156-63a-102(1).

R156-63a-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is a contract security company shall obtain a passing score of at least 75% on the Utah Contract Security Company Qualifying Agent Examination.

(2) An applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 80% on the approved basic education and training program's final examination.

R156-63a-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;

(b) assault and battery;

(c) personal injury;

(d) false arrest;

(e) libel and slander;

(f) invasion of privacy;

(g) broad form property damage;

(h) damage to property in the care, custody or control of the contract security company; and

(i) errors and omissions.

(2) The required insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All contract security companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63a-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

In accordance with Subsections 76-10-509(1) and 76-10-509.4, an armed private security officer must be 18 years of age or older at the time of submitting an application for licensure.

R156-63a-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In accordance with Subsections 58-63-302(1)(h), (2)(c), and (3)(c), in addition to those criminal convictions prohibiting licensure, the following criminal convictions may disqualify an applicant or licensee from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;

(b) theft, including retail theft, as defined in Title 76;

(c) larceny;

(d) sex offenses as defined in Title 76, Chapter 5, Part 4;

(e) any offense involving a controlled substance as defined in Subsection 58-37-2(1)(f);

(f) fraud;

(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography;
(u) two or more convictions for driving under the influence of alcohol within the last three years; and
(v) any attempt to commit any of the above offenses.

(2) An applicant may not obtain initial licensure or license renewal as an armed private security officer or as a contract security company providing armed private security services, and the license of an armed private security officer or of a contract security company providing armed private security services shall be automatically revoked, if the applicant or licensee is in violation of any provision set forth in:

(a) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(b) Utah Code Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) In accordance with Subsection 58-63-302(1), if the applicant or licensee is a contract security company, the background of the following individuals shall be considered:

(a) corporate officer;
(b) director;
(c) any shareholder owning 5% or more of the outstanding stock of the company as described in Subsection 58-63-302(1)(d)(ii);
(d) partner;
(e) proprietor;
(f) qualifying agent; and
(g) management personnel employed within Utah or having direct responsibility for managing operations of the company within Utah.

(4) Criminal history and statutory violations that do not automatically disqualify an applicant under statute or rule shall be considered on a case-by-case basis in accordance with Section R156-1-302.

R156-63a-302g. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

In accordance with Section 58-63-310, upon receipt of a complete application for licensure as an unarmed private security officer or as an armed private security officer, the Division may immediately issue an interim permit to the applicant, if the applicant:

(1)(a) submits with the applicant's application an official criminal history report from the Bureau of Criminal Identification, Utah Department of Public Safety, showing "No Criminal Record Found";

(b) has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(c) has not had a license to practice an occupation or profession denied, revoked, suspended, restricted, or placed on probation.

(2) If an applicant's application is denied, an interim permit issued under this section shall automatically expire.

R156-63a-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 63 is established by rule in Section R156-1-308a.

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

R156-63a-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Armed and unarmed private security officers shall complete 16 hours of continuing education every two years consisting of education that includes:

(a) company operational procedures manual;
(b) applicable state laws and rules;
(c) legal powers and limitations of private security officers;
(d) observation and reporting techniques;
(e) ethics; and
(f) emergency techniques.

(3) Credit for the 16 hours of continuing education shall be recognized in accordance with the following:

(a) Unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences.

(b) Unlimited hours shall be recognized for continuing education that is provided via Internet provided the course provider verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(4) In addition to the required 16 hours of continuing education, armed private security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63a-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(5) An individual holding a current armed private security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(6) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(7) Each licensee shall maintain documentation showing

compliance with the requirements above.

(8) The continuing education course provider shall provide course participants who complete the continuing education course with a course completion certificate.

(9) The course certificate shall contain:

(a) the name of the participant;

(b) the date the course was taken;

(c) the location where the course was taken;

(d) the title of the course;

(e) the name of the course provider and instructor; and

(f) the number of continuing education hours completed.

R156-63a-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63a-302f to determine appropriate licensure action.

R156-63a-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-504.

R156-63a-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an unarmed private security officer, an armed private security officer, or a contract security company, so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as a contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the contract security company's insurance policy;

(8) failing as a contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63a-613;

(9) pursuant to Subsection R156-63a-612(3), failing as a contract security company or an armed private security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c); and

(10) wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with a contract security company, when not employed as an armed or unarmed private security officer by a contract security company.

R156-63a-503. Mandatory Sanctions - Administrative Penalties.

(1) The license of a contract security company or an armed private security officer shall be suspended for a period of time determined by the Board if the licensee fails to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(2) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

Violation	Contract Security Company	Armed or Unarmed Security Officer
FIRST OFFENSE		
58-63-501(1)	$ 800.00	N/A
58-63-501(4)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(4)	$1,600.00	$1,000.00

(3) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(4) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(5) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(6) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63a-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which the officer has passed an approved basic firearms training program.

(2) Shotguns and rifles owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer, if the officer has successfully completed an approved basic firearms training program in

their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63a-602. Division Approval and Operating Standards - Training Programs for Armed and Unarmed Private Security Officers.

(1) To obtain Division approval of any training program for armed private security officers and unarmed private security officers, the program owner shall submit to the Division:

(a) an application in a form prescribed by the Division;

(b) a fee for the approval of the program; and

(c) a written education and training manual which includes:

(i) a course syllabus with an hourly breakdown of the course outline and training schedule;

(ii) a course curriculum;

(iii) a four-hour instructor training program;

(iv) testing tools; and

(v) if an online curriculum or multi-media learning tools are used, a copy of the original medium.

(2) If any individual or entity uses an approved basic education and training program that the user does not own, the user shall submit to and maintain with the Division a current copy of the user's written contract with the program owner, which identifies the duration allowed for use. The user shall promptly update this information in writing with the Division as necessary.

(3) A course curriculum for armed private security officers shall include the content established in Sections R156-63a-603 and R156-63a-604.

(4) A course curriculum for unarmed private security officers shall include the content established in Section R156-63a-603.

(5) All instructors teaching an approved basic education and training program shall:

(a) have at least three years of supervisory experience reasonably related to providing contract security services; and

(b) have completed a four-hour instructor training program which shall include the following:

(i) motivation and the learning process;

(ii) teacher preparation and teaching methods;

(iii) classroom management;

(iv) testing; and

(v) instructional evaluation.

(6) All instructors teaching an approved basic firearms training program shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructor certification; or

(b) current certification as a firearms instructor by:

(i) the National Rifle Association;

(ii) a Utah law enforcement agency;

(iii) a Federal law enforcement agency;

(iv) a branch of the United States military; or

(v) other qualification or certification found by the Division, in collaboration with the Board, to be equivalent.

(7) When an instructor for a Division-approved training program begins providing instruction, the user of the Division-approved training program shall report the instructor's name to the Division, on a form supplied by the Division.

(8) When an instructor for a Division-approved training program ceases to instruct for that program, or no longer meets instructor requirements, the user of the Division-approved training program shall report that information and the instructor's name to the Division, on a form supplied by the Division.

(9) All approved training programs shall maintain training records on each individual trained, including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the program's files for at least three years.

(10) If an approved training program provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(11) Instructors who teach continuing education programs and are licensed armed or unarmed private security officers, shall receive continuing education credit for actual preparation time for up to two times the number of hours to which participants are entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63a-603. Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

In accordance with Subsections 58-63-302(2)(g) and 58-63-302(3)(f), an approved basic education and training program for armed and unarmed private security officers shall have at least 24 hours of classroom or online instruction, including:

(1) 16 hours of basic instruction, to include:

(a) the nature and role of private security, including a private security officer's:

(i) scope and limits of authority;

(ii) civil liability; and

(iii) role in today's society;

(b) state laws and rules applicable to private security;

(c) the legal responsibilities of private security, including:

(i) constitutional law;

(ii) search and seizure; and

(iii) other such topics;

(d) situational response evaluations, including:

(i) protecting and securing crime or accident scenes;

(ii) notifying internal and external agencies; and

(iii) controlling information;

(e) security ethics;

(f) the use of force, emphasizing the de-escalation of force and alternatives to using force;

(g) documentation and report writing, including:

(i) preparing witness statements;

(ii) performing log maintenance;

(iii) exercising control of information;

(iv) taking field notes;

(v) organizing information into a report; and

(v) performing basic writing;

(h) patrol techniques, including:

(i) mobile patrol versus fixed post;

(ii) accident prevention;

(iii) responding to calls and alarms;

(iv) security breaches; and

(v) monitoring potential safety hazards;

(i) police and community relations, including fundamental duties and personal appearance of security officers;

(j) sexual harassment in the workplace; and

(2) eight hours of elective coursework determined by the instructor, which may include:

(a) current certification in:

(i) cardiopulmonary resuscitation (CPR);
(ii) automated external defibrillator (AED);
(iii) first aid; or
(iv) any other recognized basic life-saving certification;
(b) introduction to executive protection;
(c) basic self-defense;
(d) driving techniques for the security professional;
(e) escort techniques;
(f) crowd control;
(g) access control and the use of electronic detection devices;
(h) introduction to security's role with closed-circuit television systems;
(i) use of defensive items and objects;
(j) management of aggressive behavior, use of force, de-escalation techniques;
(k) homeland security involving bomb threats and anti-terrorism;
(l) Americans with Disabilities Act (ADA) compliance; and
(m) prior training as evidenced by third-party documentation, which may be accepted at the trainer's discretion to count towards the eight hours of elective training; and
(3) a final examination that:
(a) competently examines the student on the subjects included in the 16 hours of basic instruction; and
(b) mandates a minimum pass score of 80%.

R156-63a-604. Content of Approved Basic Firearms Training Program for Armed Private Security Officers.

In accordance with Subsection 58-63-302(2)(h), an approved basic firearms training program for armed private security officers shall have the following components:
(1) at least six hours of classroom firearms instruction to include the following:
(a) the firearm and its ammunition;
(b) care and cleaning of the firearm;
(c) the prohibition against alterations of the firearm's firing mechanism;
(d) firearm inspection review procedures;
(e) firearm safety on duty;
(f) firearm safety at home;
(g) firearm safety on the range;
(h) legal and ethical restraints on firearms use;
(i) explanation and discussion of target environment;
(j) stop failure drills;
(k) explanation and discussion of stance, draw stroke, cover and concealment, and other firearm fundamentals;
(l) armed patrol techniques;
(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4, and a discussion of 18 USC 44 Section 922; and
(n) instruction that an armed private security officer shall not fire the officer's weapon unless there is an imminent threat to life, and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving imminent threat to life;
(2) a final examination that demonstrates the competency of the participant on the subjects included in the six hours of classroom firearms instruction, with a passing score requirement of 80%; and
(3) at least six hours of firearms range instruction to include the following:
(a) basic firearms fundamentals and marksmanship;
(b) demonstration and explanation of the difference between sight picture, sight alignment, and trigger control; and
(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63a-605. Operating Standards - Uniform Requirements.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.
(2) Each armed and unarmed private security officer wearing a soft uniform unless assigned to an undercover status shall at a minimum display on the outermost garment of the uniform the name of the contract security company under whom the armed and unarmed private security officer is employed, and the word "Security", "Contract Security", or "Security Officer".
(3) The name of the contract security company and the word "Security" shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.
(4) Each armed and unarmed private security officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains:
(a) the name or logo of the contract security company under whom the armed or unarmed private security officer is employed; and
(b) the word "Security", "Contract Security", or "Security Officer".

R156-63a-606. Operating Standards - Badges.

(1) At the contract security company's request, an unarmed or armed private security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.
(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63a-607. Operating Standards - Notification and Prohibition of Criminal Status of Contract Security Company Corporate Officer, Director, Partner, Proprietor, Qualifying Agent, Private Security Officer, Manager, or Shareholder.

(1) In accordance with Subsections 58-63-302(1)(h), 58-63-302(2)(d) and (d), 58-63-302(3)(c), and Section R156-63a-302f, this section applies to any contract security company:
(a) corporate officer;
(b) director;
(c) partner;
(d) proprietor;
(e) qualifying agent;
(f) private security officer;
(g) management personnel employed within Utah having direct responsibility for managing operations of a contract security company within Utah; and
(h) shareholder owning 5% or more as described in Subsection 58-63-302(1)(d)(ii).
(2) A person identified in Subsection (1) shall not participate at any level or capacity in the management, operations, sales, or employment of a contract security company, and shall not own any part of a contract security company (except less than 5% under Subsection 58-63-302(1)(d)(ii), if the person fails to meet a licensing requirement set forth in:
(a) Subsections 58-63-302(1)(h), or 58-63-302(2)(c) or

(3)(c), for conviction of a felony, or of a misdemeanor involving moral turpitude, or a of a crime that when considered with the duties and responsibilities of the license by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(b) Subsections 58-63-302(1)(h)(iii) or 58-63-302(2)(d), for conviction of violating any provision set forth in:

(i) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(ii) Subsection 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) A contract security company shall:

(a) within ten calendar days of occurrence, report to the Division in writing any event that occurs in regard to a person identified in Subsection (1), respecting:

(i) any conviction listed under this Subsection (2) or Subsection R156-63b-302f(2) as a disqualifying criminal conviction; and

(ii) any conviction listed under Subsection R156-63b-302f(1) as a potentially disqualifying criminal conviction; and

(b) take appropriate steps to ensure that company ownership and operations comply with this Section.

R156-63a-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63a-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a government-issued identification card or a current state-issued driver license whenever performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63a-610. Operating Standards - Vehicles.

(1) All contract security vehicles shall conform to the following requirements:

(a) green, amber, and white are the only colors that may be used in roof mounted light bars facing forward on a contract security vehicle;

(b) green, amber, and red are the only colors that may be used in roof mounted light bars facing rearward on a contract security vehicle;

(c) light bars may only be operated on private property in which the company has a written contract;

(d) light bars may be operated on public highways only when personally directed to do so by a peace officer; and

(e) all contract security vehicles shall meet the requirements of Section 41-6a-1616.

(2) A contract security company or its personnel may not utilize a vehicle whose marking, lighting and signal devices:

(a) display any form of blue lighting;

(b) use a siren in any manner;

(c) display a star or star badge insignia; or

(d) employ any wording that suggests they are connected with law enforcement.

(3) A contract security company vehicle may have a public address system, an air horn, or both.

(4) The word "Security", either alone or in conjunction with the company name, shall appear on each side and the rear of the company vehicle in letters no less than four inches in height and in a color contrasting with the color of the contract security company vehicle and shall be legible from a reasonable distance.

R156-63a-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers;
(r) sexual harassment in the workplace; and
(s) hazardous chemical release.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63a-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63a-613. Operating Standards - Notification of Criminal Arrest, Charge, Indictment, or Conviction - Notification of On-Duty Firearm Discharge.

(1) In accordance with Subsection 58-63-302(2):

(a) A licensed armed or unarmed private security officer shall notify the licensee's employing contract security company, or if none, shall notify the Division, within 72 hours of being arrested, charged, indicted, or convicted for:

(i) any criminal offense above the level of a Class C misdemeanor;

(ii) any offense set forth in:

(A) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons;

(B) Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons;

(C) Subsections 58-63-302(2)(c), or (3)(c), concerning a felony, a misdemeanor involving moral turpitude, or a crime that when considered with the duties and responsibilities of a private security officer by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(D) Subsection R156-63b-302g(1), concerning certain

potentially disqualifying criminal offenses;

(b) A contract security company shall notify the Division within 72 hours of receiving notification, or becoming aware, of any arrest, charge, indictment, or conviction of any of its licensed employees under this Subsection (1).

(c) Notification under this Subsection (1)(b) shall be in writing, and include:

(i) the employee's name;

(ii) the name of the court or arresting agency, if applicable;

(iii) the court or agency case number or similar case identifier;

(iv) the date of the arrest, charge, indictment, or conviction; and

(v) the nature of the criminal offense or violation.

(2) In accordance with Subsections 58-63-302(2) and 58-1-202(1)(d), the following notice and appearance standards shall apply to an on-duty discharge of a firearm by an armed private security officer:

(a) Within 24 hours of the on-duty discharge, the armed private security officer shall notify the officer's employing contract security company, or if none, then the armed private security officer shall notify the Division.

(b) Within 72 hours of receiving notification, or becoming aware, of an on-duty firearm discharge by its employee, the employing contract security company shall notify the Division.

(c) Notification under this Subsection (2) shall be in writing, and include:

(i) the employee's name;

(ii) the date of the firearm discharge;

(iii) the nature of the firearm discharge; and

(iv) the physical location of the firearm discharge.

(d) The Security Services Licensing Board shall require a mandatory appearance before the Board by the qualifying agent over that officer, to review the company policy and procedure for dealing with an on-duty discharge.

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58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-63b. Security Personnel Licensing Act Armored Car Rule.
R156-63b-101. Title.

This rule is known as the "Security Personnel Licensing Act Armored Car Rule."

R156-63b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means a basic education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63b-602; and

(b) has the content required by Section R156-63b-603.

(2) "Approved basic firearms training program" means a firearms education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63b-602; and

(b) has the content required by Section R156-63b-604.

(3) "Armored car company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom the peace officer is employed.

(4) "Armored car company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or other high value items that require secured delivery from one place to another and are owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(viii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Corporate officer" as defined in Subsection 58-63-102(9), includes an individual who is on file with the Division of Corporations and Commercial Code as a limited liability company's company officer or "governing person" as defined in Subsection 48-3a-102(7), or as a limited partnership's "general partner" as defined in Subsection 48-23-102(8).

(9) "Employee" means an individual providing services in the armored car industry for compensation when the amount of compensation is based directly upon the armored car services provided, and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(10) "Instructor" means a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, who has fulfilled the instructor experience and training requirements set forth in Section R156-63b-602.

(11) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63b-304.

(12) "Qualifying agent" means a natural person who meets all of the requirements set forth in Subsection 58-63-302(1)(c).

(13) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or armored car company logo that clips onto or is placed over the front pocket.

(14) "Supervised on-the-job training" means training of an armored car security officer under the supervision of a licensed armored car security officer who has been assigned to train and develop the on-the-job trainee.

(15) "Supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(16) "Trainer" has the same meaning as "instructor".

(17) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-63b-502.

R156-63b-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 63.

R156-63b-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.

R156-63b-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an armored car company shall be accompanied by:

(a) two fingerprint cards for each of the applicant's:

(i) qualifying agent;

(ii) corporate officers;

(iii) directors;

(iv) equity holders or shareholders owning more than 5% of the equity or outstanding shares;

(v) partners;

(vi) proprietors; and

(vii) responsible management personnel; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each of the persons required to provide a fingerprint card under Subsection (1)(a) above.

(2) An application for licensure as an armored car security officer shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records for the applicant with:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

R156-63b-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-63-302(4)(g), an applicant for licensure as an armored car security officer shall successfully complete an approved basic education and training program as defined in Subsection

R156-63b-102(1).

R156-63b-302c. Qualifications for Licensure - Firearm Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-63-302(4)(h), an applicant for licensure as an armored car security officer shall successfully complete an approved basic firearms training program as defined in Subsection R156-63b-102(2).

R156-63b-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is an armored car company shall obtain a passing score of at least 75% on the Utah Armored Car Company Qualifying Agent Examination.

(2) An applicant for licensure as an armored car security officer shall obtain a score of at least 80% on the approved basic education and training program's final examination.

R156-63b-302e. Qualification for Licensure - Liability Insurance for a Armored Car Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as an armored car company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;
(b) assault and battery;
(c) personal injury;
(d) libel and slander;
(e) broad form property damage;
(f) damage to property in the care, custody or control of the armored car company; and
(g) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $500,000 for each incident and not less than $2,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All armored car companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All armored car companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63b-302f. Qualifications for Licensure - Age Requirement for Armored Car Security Officer.

In accordance with Subsections 76-10-509(1) and 76-10-509.4, an armored car security officer must be 18 years of age or older at the time of submitting an application for licensure.

R156-63b-302g. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In accordance with Subsections 58-63-302(1)(h) and (4)(c), in addition to those criminal convictions prohibiting licensure, the following criminal convictions may disqualify an applicant or licensee from obtaining or holding an armored car security officer license, or an armored car company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
(b) theft, including retail theft, as defined in Title 76;
(c) larceny;
(d) sex offenses as defined in Title 76, Part 4;
(e) any offense involving a controlled substance as defined in Subsection 58-37-2(1)(f);
(f) fraud;
(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography;
(u) two or more convictions for driving under the influence of alcohol within the last three years; and
(v) any attempt to commit any of the above offenses.

(2) An applicant may not obtain initial licensure or license renewal as an armored car security officer or as an armored car company, and the license of an armored car security officer or of an armored car company shall be automatically revoked, if the applicant or licensee is in violation of any provision set forth in:

(a) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(b) Utah Code Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) In accordance with Subsection 58-63-302(1), if the applicant or licensee is an armored car company, the background of the following individuals shall be considered:

(a) corporate officer;
(b) director;
(c) any shareholder owning 5% or more of the outstanding stock of the company as described in Subsection 58-63-302(1)(d)(ii);
(d) partner;
(e) proprietor;
(f) qualifying agent; and
(g) management personnel employed within Utah or having direct responsibility for managing operations of the company within Utah.

(4) Criminal history and statutory violations that do not automatically disqualify an applicant under statute or rule shall be considered on a case-by-case basis in accordance with Section R156-1-302.

R156-63b-302h. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

In accordance with Section 58-63-310, upon receipt of a complete application for licensure as an armored car security officer, the Division may immediately issue an interim permit to the applicant, if the applicant:

(1)(a) submits with the application an official criminal history report from the Bureau of Criminal Identification, Utah Department of Public Safety, showing "No Criminal

Record Found";

(b) has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(c) has not had a license to practice an occupation or profession denied, revoked, suspended, restricted, or placed on probation.

(2) If an applicant's application is denied, an interim permit issued under this section shall automatically expire.

R156-63b-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 63 is established by rule in Section R156-1-308a.

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

R156-63b-304. Continuing Education for Armored Car Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armored car security officer.

(2) Armored car security officers shall complete 16 hours of continuing education every two years consisting of education that includes:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) ethics; and

(d) emergency techniques.

(3) Credit for the 16 hours of continuing education shall be recognized in accordance with the following:

(a) Unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences.

(b) Unlimited hours shall be recognized for continuing education that is provided via the Internet provided the course provider verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(4) In addition to the required 16 hours of continuing education, armored car security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63b-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(5) Firearms education and training shall comply with the provisions of Title 15, USC Chapter 85, the Armored Car Industry Reciprocity Act.

(6) An individual holding a current armored car security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(7) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(8) Each licensee shall maintain documentation showing compliance with the requirements of this section.

(9) The continuing education course provider shall provide course participants, who complete the continuing education course, with a course completion certificate.

(10) The course certificate shall contain:

(a) the name of the participant;

(b) the date the course was taken;

(c) the location where the course was taken;

(d) the title of the course;

(e) the name of the course provider and instructor; and

(f) the number of continuing education hours completed.

R156-63b-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63b-302g to determine appropriate licensure action.

R156-63b-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed armored car company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the armored car company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-504.

R156-63b-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an armored car security officer or as an armored car company so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place

the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;

(8) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-612;

(9) pursuant to Subsection R156-63b-612(3), failing as an armored car company or an armored car security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsection 58-63-302(1)(a), (2)(c), or (3)(c); and

(10) wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company.

R156-63b-503. Mandatory Sanctions - Administrative Penalties.

(1) The license of an armored car company or an armored car security officer shall be suspended for a period of time determined by the Board if the licensee fails to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(2) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

Violation	Armored Car Company	Armed or Unarmed Armored Car Security Officer
FIRST OFFENSE		
58-63-501(1)	$ 800.00	N/A
58-63-501(4)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(4)	$1,600.00	$1,000.00

(3) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(4) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(5) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(6) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63b-601. Operating Standards - Firearms.

(1) An armored car security officer shall carry only that firearm with which the officer has passed an approved basic firearm training program.

(2) Shotguns and rifles owned and issued by the armored car company, may be used in situations where they would constitute an appropriate defense for the armored car security officer, if the officer has successfully completed a firearms training program specific to shotgun or rifle use.

(3) An armored car security officer shall not carry a firearm except when acting on official duty as an employee of an armored car company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63b-602. Division Approval and Operating Standards - Training Program for Armored Car Security Officers.

(1) To obtain Division approval of a training program for armored car security officers, the program owner shall submit to the Division:

(a) an application in a form prescribed by the Division;

(b) a fee for the approval of the program; and

(c) a written education and training manual which includes:

(i) a course syllabus with an hourly breakdown of the course outline and training schedule;

(ii) a course curriculum;

(iii) a four-hour instructor training program;

(iv) testing tools; and

(v) if an online curriculum or multi-media learning tools are used, a copy of the original medium.

(2) If any individual or entity uses a Division-approved training program that the user does not own, the user shall submit to and maintain with the Division a current copy of the user's written contract with the program owner, which identifies the duration allowed for use. The user shall promptly update this information in writing with the Division as necessary.

(3) A course curriculum shall include the following content:

(a) for a basic education and training program, the content established in Section R156-63b-603; and

(b) for a basic firearms training program, the content established in Section R156-63b-604.

(4) All instructors teaching an approved basic education and training program shall:

(a) have at least three years of supervisory experience reasonably related to providing armored car security services; and

(b) have completed a four-hour instructor training program which shall include the following:

(i) motivation and the learning process;

(ii) teacher preparation and teaching methods;

(iii) classroom management;

(iv) testing; and

(v) instructional evaluation.

(5) All instructors teaching an approved basic firearms training program shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructor certification; or

(b) current certification as a firearms instructor by:

(i) the National Rifle Association;

(ii) a Utah law enforcement agency;

(iii) a Federal law enforcement agency;

(iv) a branch of the United States military; or

(v) other qualification or certification determined by the Division, in collaboration with the Board, to be equivalent.

(6) When an instructor for a Division-approved training program begins providing instruction, the user of the Division-approved training program shall report the

instructor's name to the Division, on a form supplied by the Division.

(7) When an instructor for a Division-approved training program ceases to instruct for that program, or no longer meets instructor requirements, the user of the Division-approved training program shall report that information and the instructor's name to the Division, on a form supplied by the Division.

(8) All approved training programs shall maintain training records on each individual trained, including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the program's files for at least three years.

(9) If an approved training program provider ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(10) Instructors who teach continuing education programs and are licensed armored car security officers, shall receive continuing education credit for actual preparation time for up to two times the number of hours to which participants are entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63b-603. Content of Approved Basic Education and Training Program.

In accordance with Subsection 58-63-302(4)(g), an approved basic education and training program for armored car security officers shall have at least 24 hours of instruction, including:

(1) 16 hours of basic instruction, to include:

(a) the nature and role of private security, including an armored car security officer's:

(i) scope and limits of authority;

(ii) civil liability;

(iii) role in today's society;

(b) state laws and rules applicable to armored car security;

(c) legal responsibilities of armored car security, including:

(i) constitutional law;

(ii) search and seizure; and

(iii) other such topics;

(d) ethics;

(e) use of force, emphasizing the de-escalation of force and alternatives to using force;

(f) police and community relations, including fundamental duties and the personal appearance of an armored car officer;

(g) sexual harassment in the workplace;

(h) driving policies and procedures, driver training and vehicle orientation;

(i) emergency situation response, including:

(i) terminal security;

(ii) traffic accidents;

(iii) robbery situations;

(iv) homeland security;

(v) reducing risk potential through street procedures and tactics;

(vi) securing robbery scenes; and

(vii) dealing with the media; and

(j) armored operations, including:

(i) proper paperwork;

(ii) street control procedures;

(iii) vehicle transfers;

(iv) vault procedures; and

(v) other proper branch procedures.

(2) Eight hours of elective coursework determined by the instructor, which may include:

(a) current certification in:

(i) cardiopulmonary resuscitation (CPR);

(ii) automated external defibrillator (AED);

(iii) first aid; or

(iv) any other recognized basic life-saving certification;

(b) introduction to executive protection;

(c) basic self-defense;

(d) escort techniques;

(e) access control and the use of electronic detection devices;

(f) use of defensive items and objects;

(g) management of aggressive behavior, use of force, de-escalation techniques;

(h) homeland security involving bomb threats and anti-terrorism;

(i) Americans with Disabilities Act (ADA) compliance; and

(j) prior training, as evidenced by third-party documentation, which may be accepted at the trainer's discretion to count towards the eight hours of elective training.

(3) A final examination that:

(a) competently examines the student on the subjects included in the 16 hours of basic classroom instruction; and

(b) mandates a minimum pass score of 80%.

R156-63b-604. Content of Approved Basic Firearms Training Program.

In accordance with Subsection 58-63-302(4)(h), an approved basic firearms training program for armored car security officers shall have the following components:

(1) at least six hours of classroom firearms instruction, to include the following:

(a) the firearm and its ammunition;

(b) care and cleaning of the firearm;

(c) the prohibition against alterations of the firearm's firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on the range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment, and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4, and a discussion of 18 USC 44 Section 922; and

(n) instruction that an armored car security officer shall not fire the officer's weapon unless there is an imminent threat to life, and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving imminent threat to life;

(2) a final examination that demonstrates the competency of the participant on the subjects included in the six hours of classroom firearms instruction, with a passing score requirement of 80%; and

(3) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment, and trigger control;

and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63b-605. Operating Standards - Uniform Requirements.

(1) All armored car security officers while on duty shall wear the uniform of their armored car company employer unless assigned to work undercover.

(2) The name of the armored car company shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(3) Each armored car company officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains the name or logo of the armored car company under whom the armored car security officer is employed.

R156-63b-606. Operating Standards - Badges.

(1) At the armored car company's request, an armored car security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63b-607. Operating Standards - Notification and Prohibition of Criminal Status of Armored Car Company Corporate Officer, Director, Partner, Proprietor, Qualifying Agent, Armored Car Security Officer, Manager, or Shareholder.

(1) In accordance with Subsections 58-63-302(1)(h) and (i), 58-63-302(4)(c) and (d), and Section R156-63b-302g, this section applies to any armored car company:

(a) corporate officer;

(b) director;

(c) partner;

(d) proprietor;

(e) qualifying agent;

(f) armored car security officer;

(g) management personnel employed within Utah or having direct responsibility for managing operations of the armored car company within Utah; and

(h) shareholder owning 5% or more as described in Subsection 58-63-302(1)(d)(ii).

(2) A person identified in Subsection (1) shall not participate at any level or capacity in the management, operations, sales, or employment of an armored car company, and shall not own any part of an armored car company (except less than 5% as described in Subsection 58-63-302(1)(d)(ii)), if the person fails to meet a licensing requirement set forth in:

(a) Subsections 58-63-302(1)(h) or 58-63-302(4)(c), for conviction of a felony, or of a misdemeanor involving moral turpitude, or of a crime that when considered with the duties and responsibilities of the license by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(b) Subsections 58-63-302(1)(h)(iii) or 58-63-302(4)(d), for conviction of violating any provision set forth in:

(i) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(ii) Subsection 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) An armored car company shall:

(a) within ten calendar days of occurrence, report to the Division in writing any event that occurs in regard to a person identified in Subsection (1), respecting:

(i) any conviction listed under this Subsection (2) or Subsection R156-63b-302g(2) as a disqualifying criminal conviction; and

(ii) any conviction listed under Subsection R156-63b-302g(1) as a potentially disqualifying criminal conviction; and

(b) take appropriate steps to ensure that company ownership and operations comply with this Section.

R156-63b-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No armored car company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No armored car company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63b-609. Operating Standards - Proper Identification of Armored Car Security Officers.

All armored car security officers shall carry a valid security license together with a government-issued identification card or a current state-issued driver license whenever performing the duties of an armored car security officer and shall exhibit said license and identification upon request.

R156-63b-610. Operating Standards - Operational Procedures Manual.

(1) Each armored car company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;

(b) restraining, detaining, and search and seizure;

(c) felony and misdemeanor definitions;

(d) observing and reporting;

(e) ingress and egress control;

(f) natural disaster preparation;

(g) alarm systems, locks, and keys;

(h) radio and telephone communications;

(i) crowd control;

(j) public relations;

(k) personal appearance and demeanor;

(l) bomb threats;

(m) fire prevention;

(n) mental illness;

(o) supervision;

(p) criminal justice system;

(q) code of ethics for armored car security officers;

(r) sexual harassment in the workplace; and

(s) hazardous chemical release.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63b-611. Operating Standards - Display of License.

The license issued to an armored car company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63b-612. Operating Standards - Notification of Criminal Arrest, Charge, Indictment, or Conviction - Notification of On-Duty Firearm Discharge.

(1) In accordance with Subsection 58-63-302(4):

(a) A licensed armored car security officer shall notify the licensee's employing armored car company, or if none, shall notify the Division, within 72 hours of being arrested, charged, indicted, or convicted for:

(i) any criminal offense above the level of a Class C misdemeanor;

(ii) any offense set forth in:

(A) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons;

(B) Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons;

(C) Subsections 58-63-302(4)(c), concerning a felony, a misdemeanor involving moral turpitude, or a crime that when considered with the duties and responsibilities of an armored car security officer by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(D) Subsection R156-63b-302g(1), concerning certain potentially disqualifying criminal offenses.

(b) An armored car company shall notify the Division within 72 hours of receiving notification, or becoming aware, of any arrest, charge, indictment, or conviction of any of its licensed employees under this Subsection (1).

(c) Notification under this Subsection (1)(b) shall be in writing, and include:

(i) the employee's name;

(ii) the name of the court or arresting agency, if applicable;

(iii) the court or agency case number or similar case identifier;

(iv) the date of the arrest, charge, indictment, or conviction; and

(v) the nature of the criminal offense or violation.

(2) In accordance with Subsection 58-63-302(4) and 58-1-202(1)(d), the following notice and appearance standards shall apply to an on-duty discharge of a firearm by an armored car security officer:

(a) Within 24 hours of the on-duty discharge, the armored car security officer shall notify the officer's employing armored car company, or if none, then the armored car security officer shall notify the Division.

(b) Within 72 hours of receiving notification, or becoming aware, of an on-duty firearm discharge by its employee, the employing armored car company shall notify the Division.

(c) Notification under this Subsection (2) shall be in writing, and include:

(i) the employee's name;

(ii) the date of the firearm discharge;

(iii) the nature of the firearm discharge; and

(iv) the physical location of the firearm discharge.

(d) The Security Services Licensing Board shall require a mandatory appearance before the Board by the qualifying agent over that officer, to review the company policy and procedure for dealing with an on-duty discharge.

KEY: licensing, security guards, armored car security officers, armored car company

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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)(f), the required licensing examination sequence is as follows:

(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.

R156-67-303. 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) In accordance with Subsection 58-67-304(1), the qualified continuing professional education requirements shall consist of 40 hours during each two-year licensure cycle, as follows:

(a) A minimum of 34 of the required 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) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

(d) Participation in a residency program approved by the AOA or the ACCME shall meet the continuing education requirement in a pro-rata amount equal to any part of the 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) administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-67-402.5(1):

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

(f) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-67-502.5(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

(g) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-67-502.5(3):

First Offense: $5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) 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

(i) 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

(j) 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

(k) 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

(l) 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

(m) 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

(n) 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

(o) 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

(p) 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

(q) 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

(r) 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

(s) 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

(t) 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

(u) 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

(v) 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

(w) 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

(x) 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

(y) 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

(z) 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

(aa) 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

(bb) 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

(cc) 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

(dd) 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

(ee) 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

(ff) 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

(gg) 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

(hh) 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

(ii) 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

(jj) 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

(kk) 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

(ll) 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

(mm) 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

(nn) 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

(oo) 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

(pp) 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

(qq) 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

(rr) 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

(ss) 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

(tt) 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

(uu) 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

(vv) 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

(ww) 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

(xx) 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

(yy) 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

(zz) 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 11, 2017	**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) In accordance with Subsection 58-68-304(1), the qualified continuing professional education requirements shall consist of 40 hours during each two-year licensure cycle as follows:

(a) A minimum of 34 of the required 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) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

(d) Participation in a residency program approved by the AOA or the ACCME shall meet the continuing education requirement in a pro-rata amount equal to any part of the 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) administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-68-502.5(1):

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.

(f) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-68-502.5(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.

(g) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-68-502.5(3):

First Offense: $5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the

second offense

(h) 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

(i) 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

(j) 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

(k) 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

(l) 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

(m) 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

(n) 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

(o) 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

(p) 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

(q) 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

(r) 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

(s) 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

(t) 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

(u) 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

(v) 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

(w) 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

(x) 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

(y) 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

(z) 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

(aa) 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

(bb) 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

(cc) 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

(dd) 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

(ee) 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

(ff) 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

(gg) 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

(hh) 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

(ii) 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

(jj) 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

(kk) 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

(ll) 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

(mm) 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

(nn) 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

(oo) 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

(pp) 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

(qq) 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

(rr) 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

(ss) 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

(tt) 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

(uu) 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

(vv) 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

(ww) 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

(xx) 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

(yy) 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

(zz) 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 11, 2017	**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.
R156-80a. Medical Language Interpreter Act Rule.
R156-80a-101. Title.

This rule is known as the "Medical Language Interpreter Act Rule".

R156-80a-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 80a.

R156-80a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Section R156-1 is as described in Section R156-1-107.

R156-80a-303. Qualifications for Certification - Examination Requirements.

(1) In accordance with Subsection 58-80a-303(1)(b)(i), an applicant for certification as either a tier 1 or tier 2 certified medical language interpreter shall provide verification that the examinations or examination passed by the applicant are administered or recognized by either:

(a) the National Board of Certification for Medical Interpreters (NBCMI); or

(b) the Certification Commission for Healthcare Interpreters (CCHI).

(2) In accordance with Subsection 58-80a-303(2), an applicant for certification shall apply for tier 1 certification if the language for which the applicant will provide medical interpreting is:

(a) Arabic;
(b) Cantonese;
(c) Korean;
(d) Russian;
(e) Mandarin;
(f) Spanish; or
(g) Vietnamese.

(3) In accordance with Subsection 58-80a-303(2), an applicant for certification as a tier 2 certified medical language interpreter shall:

(a) attest that an oral examination meeting the requirements of Subsection 58-80a-303(1)(b) is not available in the language for which the applicant seeks certification; and

(b) agree that if an oral examination meeting the requirements of Subsection 58-80a-303(1)(b) does become available, the applicant must pass that exam and apply for tier 1 certification within six months of the exam's availability or by the end of that licensing period, whichever is later.

R156-80a-304. Renewal Cycle - Procedures.

(1) In accordance with Section 58-80a-304, the renewal date for the three-year renewal cycle applicable to licensees under Title 58, Chapter 80a is established by rule in Subsection R156-1-308a(2).

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

KEY: licensing, medical language interpreter, certified medical language interpreter

December 11, 2017	**58-80a-101**
Notice of Continuation March 31, 2014	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-87. Revised Uniform Athlete Agents Act Rule.
R156-87-101. Title.

This rule shall be known as the "Revised Uniform Athlete Agents Act Rule".

R156-87-102. Definitions.

(1) "Unprofessional conduct" as defined in Title 58, Chapter 1, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-87-502.

R156-87-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 87.

R156-87-104. 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.

R156-87-303. Renewal Cycle - Procedure.

(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 87 is established by rule in Section R156-1-308a.

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

R156-87-502. Unprofessional Conduct.

"Unprofessional conduct" by an athlete agent includes:

(1) failing to comply with the agency contract requirements of Section 58-87-301;

(2) failing to notify an educational institution as required by Section 58-87-302;

(3) failing to comply with the agency contract cancellation requirements of Section 58-87-303;

(4) failing to create, or to retain for a period of five years, records required by Section 58-87-304; and

(5) failing to allow Division investigative staff access to records in accordance with Section 58-87-304.

KEY: licensing, athlete agent
December 11, 2017 58-87-103(1)(b)
Notice of Continuation January 7, 2016 58-1-106(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 a commercial message 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;

(k) other electronic communication; or

(l) 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-202d. Property Management Sales Agent Licensing Fees and Procedures.

(1) A sales agent affiliated with a dual broker through a property management company may act as a property management sales agent if:
(a) the dual broker designates the sales agent as a property management sales agent, and
(b) the sales agent pays to the division the property management sales agent designation fee.
(2) A property management sales agent may simultaneously provide both property management services and real estate sales services under the supervision of the dual broker if the property management sales agent:
(a) provides property management services only through the property management company overseen by the dual broker, and
(b) provides real estate sales services only through the real estate brokerage overseen by the dual broker.
(3) Before a property management sales agent may affiliate with another principal broker who is not a dual broker or with a dual broker who does not approve of the property management sales agent designation, the property management sales agent shall pay the additional fee to remove the property management sales agent designation.

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

(i) as applicable:

(A) entering the certified mail reference number into the appropriate field on the electronic change form; or

(B) providing to the division a copy of the certified mail receipt; or

(b) sending an email to notify the individual.

(5) The termination of affiliation by sending an email is effective 10 days after the date that the email was sent.

(6) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(7) 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.

(8) 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 prior 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) when making an offer or solicitation to buy, sell, lease or rent real property as a principal, either directly or indirectly, or as an agent for a client, a licensee shall disclose in the initial contact with the other party the fact that the licensee holds a license with the division, whether the license status is active or inactive;

(6) 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;

(7) 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;

(8) 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;

(9) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(10) 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;

(12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

(i) consenting to the sub-agency; and

(ii) defining the scope of the agency;

(c) obtain from the listing brokerage all available information about the property; and

(d) uphold the same fiduciary duties outlined in this Subsection (1);

(13) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(14)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

(i) the principal broker's individual name; or

(ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

(a) the licensee is involved as agent or principal;

(b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(16)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(17)(a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;

(18) use an approved addendum form to make a counteroffer or any other modification to a contract;

(19) in order to sign or initial a document on behalf of a principal 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);"

(20) 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 initials), on behalf of Owner;"

(21) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(22) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(23) 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;

(24) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(25) as contemplated by Subsection 61-2f-401(20), 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(s) 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(24);

(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 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 branch broker shall:

(a) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker; and

(b) be personally responsible and accountable for all other responsibilities and duties assigned to the branch broker by the principal broker and accepted by the branch broker.

(3) Neither a principal broker nor a branch broker shall be deemed in violation of Subsections (1)(f)and (2) 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.

(1) The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

(a) July 19, 2017, Real Estate Purchase Contract;

(b) January 1, 1987, Uniform Real Estate Contract;

(c) October 1, 1983, All Inclusive Trust Deed;

(d) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(e) August 5, 2003, Addendum to Real Estate Purchase Contract;

(f) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;

(g) January 1, 1999, Buyer Financial Information Sheet;

(h) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(i) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(j) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and

(k) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

(l) July 19, 2017, Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract.

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) Except as provided for in subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated.

(2) When it is not reasonable for a licensee to identify the name of the brokerage in an electronic advertisement, the licensee shall ensure the electronic advertisement directly links to a display that clearly and conspicuously identifies the name of the brokerage.

(3) A licensee is not required to identify the name of the brokerage with which the licensee is affiliated if:

(a) the licensee advertises a property not currently listed with the brokerage with which the licensee is affiliated;

(b) the licensee has an ownership interest in the property; and

(c) the advertisement identifies the name of the individual licensee as "owner-agent" or "owner-broker."

(4) The name of the brokerage identified by a licensee in an advertisement shall be the name of the brokerage as shown on division records.

(5) A team, group, or other marketing entity which includes one or more licensees shall be subject to the same requirements and restrictions with regard to advertising as is an individual licensee.

(6)(a) If a licensee advertises a guaranteed sales plan, the advertisement shall include, in a clear and conspicuous manner:

(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(23).

(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.

(1) When calculating experience points in Table 1, experience points for a transaction subject to an agency agreement other than an exclusive brokerage agreement as defined in Utah Code Subsection 61-2f-308(1)(d) are limited to one-quarter of the points described in Table 1.

(2) 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
January 1, 2018 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

R162. Commerce, Real Estate.
R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.
R162-2g-101. Authority.

(1) The authority to promulgate rules governing the appraisal industry is granted by Section 61-2g-201(2)(h).

(2) The authority to establish and collect fees is granted by Section 61-2g-202(1).

(3) The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2g-205(5)(c) within certain limitations as imposed by Section 61-2g-403(1)(c).

R162-2g-102. Definitions.

(1) "Affiliation" means an ongoing business association:

(a) between:

(i) two individuals registered, licensed, or certified under Section 61-2g; or

(ii) an individual registered, licensed, or certified under Section 61-2g and:

(A) an appraisal entity; or

(B) a government agency;

(b) for the purpose of providing an appraisal service; and

(c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AQB" stands for the Appraiser Qualifications Board of the Appraisal Foundation.

(3) "Board" means the Utah Real Estate Appraiser Licensing and Certification Board.

(4) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

(5) The acronym "CAMA" stands for Computer Assisted Mass Appraisal.

(6) "Classification" means the type of license or certification held by an appraiser.

(7) "Day" means calendar day unless specified as "business day."

(8) "Deferral" means the postponement or delay for completion of a continuing education requirement due to active military duty or due to the impacts of a state- or federally-declared disaster as specified in R162-2g-306a.

(9) "Desk review" means review of an appraisal:

(a) including verification of the data; but

(b) not including a physical inspection of the property.

(10) "Distance education" means an education process based on the geographical separation of student and instructor, including:

(a) computer conferencing;

(b) satellite teleconferencing;

(c) interactive audio;

(d) interactive computer software;

(e) Internet-based instruction; and

(f) other interactive online courses.

(11) "Division" means the Division of Real Estate of the Department of Commerce.

(12) "Draft report" means an appraisal report that is distributed prior to being completed, as provided in Subsection R162-2g-502b(1).

(13) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a sole proprietorship;

(d) a limited liability company;

(e) another business entity; or

(f) a subsidiary or unit of an entity described in this Subsection (13).

(14) "Field review" means review of an appraisal, including:

(a) a physical inspection of the property; and

(b) verification of the data.

(15) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to R162-2g-307d(4).

(16) "Person" means an individual or an entity.

(17) "Reinstatement" means renewing a license or certification for an additional period after its expiration date has passed, but prior to 12 months after the expiration date.

(18) The acronym "RELMS" stands for Real Estate Licensing and Management System, which is the online database through which individuals registered, licensed, or certified under these rules must submit certain information to the division.

(19) "Renewal" means reissuing a license or certification upon its expiration for an additional period.

(20) "School" means:

(a) an accredited college, university, junior college, or community college;

(b) any state or federal agency or commission;

(c) a nationally recognized real estate appraisal or real estate related organization, society, institute, or association; or

(d) any school or organization approved by the board.

(21) "School director" means an authorized individual in charge of the educational program at a school.

(22) "Supervisory Appraiser" means a state-certified residential appraiser or a state certified general appraiser that directly supervises a trainee.

(23) "Trainee" means a person who is working under the direct supervision of a state-certified residential appraiser or a state-certified general appraiser to earn experience hours for licensure, and who meets the requirements of Subsection R162-2g-302.

(24) "Transaction value" means:

(a) for loans or other extensions of credit, the amount of the loan or extension of credit;

(b) for sales, leases, purchases, and investments in, or exchanges of, real property, the market value of the real property interest involved; and

(c) for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(25) The acronym "USPAP" stands for the current edition of the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.

R162-2g-302. Application for Trainee Registration.

(1) Registration required.

(a) An individual who intends to obtain a license to practice as a state-licensed appraiser shall first register with the division as a trainee.

(b) The division and the board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period of time when the individual is not registered as a trainee.

(2) Character. An individual registering with the division as a trainee shall evidence honesty, integrity, and truthfulness.

(a) A trainee applicant shall be denied registration for:

(i) a felony that resulted in:

(A) a conviction occurring within five years of the date of application; or

(B) a jail or prison release date falling within five years of the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation,

theft, or dishonesty that resulted in:
(A) a conviction occurring within three years of the date of application; or
(B) a jail or prison release date falling within three years of the date of application.
(b) A trainee applicant may be denied registration upon consideration of the following:
(i) criminal convictions and pleas entered at any time prior to the date of application;
(ii) the circumstances that led to any criminal convictions or pleas under consideration;
(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the appraisal business;
(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;
(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
(vi) court findings of fraudulent or deceitful activity in civil lawsuits;
(vii) evidence of non-compliance with court orders or conditions of sentencing;
(viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and
(ix) failure to pay taxes or child support obligations.
(3) Competency. An individual registering with the division as a trainee shall evidence competency. In evaluating an applicant for competency, the division and board may consider any evidence, including the following:
(a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;
(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
(c) the extent and quality of the applicant's training and education in appraisal;
(d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;
(e) evidence of disregard for licensing laws;
(f) evidence of drug or alcohol dependency; and
(g) the amount of time that has passed since any incident under consideration.
(4) Pre-licensing education.
(a) Within the five-year period preceding the date of application, an applicant shall successfully complete 75 classroom hours:
(i) approved by the AQB; and
(ii)(A) certified by the division pursuant to Subsection R162-2g-307c(1)-(3); or
(B) not required to be certified by the division pursuant to Subsection R162-2g-307c(6).
(b) The 75 hours of required education shall include:
(i) 30 hours of appraisal principles;
(ii) 30 hours of appraisal procedures; and
(iii) the 15-hour National USPAP course, or its equivalent.
(c) The15-hour National USPAP Course or its equivalent may not be accepted by the division as qualifying education unless it is:
(i) taught by an instructor who:
(A) is a state-certified residential or state-certified general appraiser; and
(B) has been certified by the AQB; or
(ii) approved as a distance education course by the AQB and International Distance Education Certification Center.
(d) A person who applies for trainee registration on or after January 1, 2015 shall successfully complete the division-approved Supervisory Appraiser and Appraiser Trainee Course:
(i) as taught by a division-approved instructor; and
(ii) within the two-year period preceding the date of application.
(e) Examination. An applicant shall evidence having passed the final examination in all pre-licensing courses.
(5) Application to the division. An applicant shall submit the following to the division:
(a) a completed application as provided by the division;
(b) course completion certificates for the 75 hours of pre-licensing education;
(c)(i) two fingerprint cards in a form acceptable to the division; or
(ii) evidence that the applicant's fingerprints have been successfully scanned at a testing center;
(d) all court documents related to any past criminal proceeding;
(e) complete documentation of any sanction taken against any license in any jurisdiction;
(f) a signed letter of waiver authorizing the division to:
(i) obtain the fingerprints of the applicant;
(ii) review past and present employment records;
(iii) review education records; and
(iv) conduct a criminal background check;
(g) the fee for the criminal background check;
(h) the name of the state-certified appraiser(s) with whom the trainee is affiliated;
(i) the name and business address of any appraisal entity or government agency with which the trainee is affiliated; and
(j) the nonrefundable application fee.
(6) Affiliation with certified appraiser(s). Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by:
(a) identifying each supervising certified appraiser on a form supplied by the division; and
(b) obtaining each supervising certified appraiser's signature on the application.

R162-2g-304a. Application to Sit for the State-Licensed Appraiser Exam.
(1) An applicant to sit for the state-licensed appraiser exam shall provide the following to the division:
(a) completed experience forms, as required by the division:
(i) documenting all experience hours completed by the applicant from the date of trainee registration to the date of application for licensure; and
(ii) evidencing at least 2,000 hours of appraisal experience:
(A) pursuant to Subsection R162-2g-304d;
(B) completed during the time when the applicant was registered with the division as a trainee; and
(C) accrued in no fewer than:
(i) 12 months for applicants submitting experience primarily from Appendices 1 and 2, or
(ii) 24 months for applicants submitting experience primarily from appendix 3;
(b) evidence of having successfully completed 30 semester hours of college-level education from an accredited:
(i) college;
(ii) junior college;
(iii) community college; or
(iv) university;
(c) evidence of having successfully completed a state-licensed appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and
(d) a nonrefundable application fee.
(2) Applicants holding an Associate degree, or higher, from an accredited college, junior college, community

college, or university satisfy the 30-hour college-level requirement.

(3) The pre-licensing curriculum required by Subsection (1)(b) shall be conducted by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(4)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (4)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304b. Application to Sit for the State-Certified Residential Appraiser Exam.

(1) An applicant to sit for the state-certified residential appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 2,500 hours of total appraisal experience, at least 500 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) 24 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendices 1 and 2; or

(B) 36 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendix 3;

(b) evidence of having received a Bachelor's degree or higher from an accredited college or university:

(c) evidence of having successfully completed a state-certified residential appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection(1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser who, within six months of renewing the license, submits an application and consequently qualifies for certification shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under this Subsection (4)(a) shall expire on the same date that the license was due to expire prior to the granting of certification.

R162-2g-304c. Application to Sit for the State-Certified General Appraiser Exam.

(1) An applicant to sit for the state-certified general appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience, at least 1,000 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser or state-certified residential appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) 30 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendices 1 and 2, or

(B) 42 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendix 3;

(b) evidence of having received a bachelor's degree or higher degree from an accredited college or university;

(c) evidence of having successfully completed a state-certified general appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsections (1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser who, within six months of renewing the license, submits an application and consequently qualifies for certification shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under this Subsection (4)(a) shall expire on the same date that the license was due to expire prior to the granting of certification.

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for evaluation and approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(v) personal property appraisals; or

(vi) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2:

(i) appraisals where only an exterior inspection of the subject property is performed shall be granted 90% of the credit awarded an appraisal that includes an interior inspection of the subject property; and

(ii) no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 250 experience hours may be earned from appraisal of vacant land.

(f) Appraisals on commercial or multi-unit form reports shall be awarded 75% of the credit normally awarded for the appraisal.

(g) Experience gained for work without a traditional client may qualify for experience hours but cannot exceed 50% of the total experience requirement. Work without a traditional client includes the following:

(i) a client hiring an appraiser for a business purpose; or

(ii) a practicum course so long as the course is approved by the AQB Course Approval Program and, if the course is taught in Utah either live or by distance education, also approved by the division.

(h) An applicant may receive credit only for experience hours actually worked by the applicant and as limited by the maximum experience hours described in these rules.

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) A registered trainee may not claim experience hours for any appraisal work performed after January 1, 2015 unless the trainee and the trainee's supervisor(s) have completed the division-approved Supervisory Appraiser and Appraiser Trainee Course prior to performing the work to be claimed.

(ii) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations for Appendix 2:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;

(G) participation in income analysis: 30% of total hours;

(H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(J) The applicant may claim up to 100% of the total hours allowed for the tasks listed in this Subsection(A) through (I).

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) exterior measurement of the relatively permanent structures located on the subject property that are designed or intended for support, enclosure, shelter, or protection of persons, animals, or property having a permanent roof supported by columns or walls; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove

more than 50% participation in the:
(A) data collection;
(B) verification of data;
(C) reconciliation;
(D) analysis;
(E) identification of property and property interests;
(F) compliance with USPAP standards; and
(G) preparation and development of the appraisal report; or
(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).
(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:
(A) the residential experience hours schedule found in Appendix 1; or
(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.
(ii) No more than 25% of the total hours submitted may be from:
(A) the general experience hours schedule found in Appendix 2; or
(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.
(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:
(i) the general experience hours schedule found in Appendix 2; or
(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.
(5) Specific restrictions applicable to mass appraisers.
(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.
(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).
(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.
(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.
(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.
(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standard 6:
(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2;
(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals:
(A) conforming to USPAP Standards 1 and 2; and
(B) including the following property types:
(I) vacant property;
(II) two- to four-unit dwelling;
(III) non-complex single-family unit; and
(IV) complex single-family unit; and
(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2.
(e) No more than 60% of the total hours submitted for licensure or certification may be earned from any combination of appraisal assignments related to:
(i) property improvement inspection;
(ii) land segregation (division);
(iii) CAMA data entry; and
(iv) sale ratio study.
(f)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.
(ii) Mass appraisal of property with a personal property component of 50% to 75% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.
(iii) Mass appraisal of property with a personal property component greater than 75%, but less than 100%, shall be awarded 25% credit pursuant to Appendix 3 for the type of property appraised.
(iv) Mass appraisal of property with no real property component shall be awarded no credit.
(g) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.
(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.
(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.
(b) Review appraisals.
(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards Rule 3 when the appraiser is required to comply with the rule.
(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:
(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and
(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.
(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.
(d) Other real estate experience acceptable for certification.
(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:
(A) preliminary valuation estimates;
(B) range of value estimates or similar studies;
(C) other real estate-related experience gained by:
(I) bankers;
(II) builders;
(III) city planners and managers; or
(IV) other individuals.
(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-304e. Experience Review Committee.

(1) The board may appoint a committee to review the experience claimed by applicants for licensure or certification.

(2) The committee shall:

(a) review each application for completion of the experience hours required for licensure or certification;

(b) correspond with applicants concerning submissions, if necessary; and

(c) make recommendations to the division and the board for licensure or certification approval or disapproval.

(3) The committee shall be composed of appraisers selected from among the following categories:

(a) residential appraisers;

(b) commercial appraisers;

(c) farm and ranch appraisers;

(d) right-of-way appraisers; and

(e) mass appraisers.

(4) The chairperson of the committee shall be appointed by the board.

(5) Meetings may be called upon:

(a) the request of the chairperson; or

(b) the written request of a quorum of committee members.

(6) If the board denies the application on the recommendation of an experience review committee member, the applicant may, within thirty days after the denial, make a written request for board review of the applicant's experience, stating specific grounds upon which relief is requested. The board shall thereafter consider the request and issue a written decision.

R162-2g-304f. Final Application for Licensure or Certification.

(1) Within 90 days after successfully completing the exam for licensure or certification, the applicant shall return to the division:

(a) a report from the testing service indicating successful completion of the exam within 24 months of the date on which the applicant obtains authorization to sit for the exam;

(b) an application form as required by the division and including:

(i) the applicant's business, home, and e-mail addresses;

(ii) the name and business address of any appraisal entity or government agency with which the applicant is affiliated; and

(iii) if the applicant is applying for certification, the fee for the federal registry.

(2)(a) A post office box without a street address is unacceptable as a business or home address.

(b) An applicant may designate any address to be used as a mailing address.

R162-2g-306a. Renewal and Reinstatement of a Registration, License, or Certification.

(1)(a) A registration, license, or certification is valid for two years and expires unless it is renewed according to this Subsection R162-2g-306a before the expiration date printed on the registration, license, or certificate.

(b) It shall be grounds for disciplinary sanction if, after an individual's registration, license, or certification has expired, the individual continues to perform work for which the individual is required to be registered, licensed, or certified.

(2)(a) To timely renew a registration, license, or certification, an applicant shall, prior to the expiration date of the registration, license, or certification, submit to the division:

(i) a completed renewal application as provided by the division;

(ii)(A) evidence that the continuing education requirements listed in this Subsection (2)(b) have been completed; or

(B) evidence sufficient to enable the Division, in its sole discretion, to determine that a deferral of continuing education is appropriate due to the applicant's having been currently or recently:

(I) assigned to active military duty; or

(II) impacted by a state- or federally-declared natural disaster; and

(iii) the applicable non-refundable renewal fee.

(b) The continuing education required under this Subsection (2)(a)(ii)(A) shall be completed during the two-year period preceding the date of application and shall include:

(i)(A) the 7-hour National USPAP Update Course, taught by an instructor or instructors, at least one of whom is a state-certified appraiser in good standing and is USPAP certified by the AQB; or

(B) equivalent education, as determined through the course approval program of the AQB; and

(ii)(A) 21 additional hours of continuing education:

(I) certified by the division for the appraisal industry at the time the courses are taught (see Appendix 4, Table 2 for a list of continuing education topics); or

(II) not required to be certified, pursuant to Subsection R162-2g-307d(3); or

(B) if the renewal applicant is also working toward certification, 21 hours of pre-licensing education credit applicable to the certification being sought.

(iii) An appraiser may earn continuing education credit

for attendance at one meeting of the Board in each continuing education two-year cycle provided:

(A) the meeting is open to the public;

(B) the meeting is a minimum of two hours in length;

(C) the total credit for attendance at the meeting is limited to a maximum of seven hours; and

(D) the division verifies attendance to ensure that the appraiser attends the meeting for the required period of time.

(c)(i) A trainee who registered with the division prior to January 1, 2015 shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A registered trainee may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of this Subsection (2)(b)(ii)(A) during any renewal cycle in which the trainee completes the course.

(d)(i) An appraiser who supervises a trainee identified in Subsection (2)(c)(i) shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A supervising appraiser may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of Subsection (2)(b)(ii)(A) during any renewal cycle in which the appraiser completes the course.

(3)(a) In order to renew on time, an applicant shall complete continuing education hours by the 15th day of the month in which the registration, license, or certification expires.

(b) An applicant who complies with this Subsection (3)(a), but whose credits are not banked by the education provider pursuant to Subsection R162-2g-502a(5)(c), may obtain credit for the course(s) taken by:

(i) submitting to the division the original course completion certificates; and

(ii) filing a complaint against the provider.

(4) A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of this Subsection (2).

(5)(a) After the 30-day period described in this Subsection (4) and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in this Subsection (5)(a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee;

(iii) paying a reinstatement fee; and

(iv) completing 24 hours of additional continuing education as approved by the division.

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date shall:

(A) reapply with the division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under this Subsection (4)(c)(i) shall receive credit for previously credited pre-licensing education if:

(A) it was completed within the five-year period prior to the date of reapplication; and

(B) it was either:

(I) completed after January 1, 2008; or

(II) certified by the division and the AQB prior to January 1, 2008, as approved, qualified pre-licensing education.

(6) If the division receives renewal documents in a timely manner, but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.

(7) Renewal after deferment of continuing education due to active military service or the impacts of a state- or federally-declared disaster.

(a) An appraiser or trainee who is unable to complete the continuing education requirements to renew a registration, license, or certification due to active military service or because the individual has been impacted by a state- or federally-declared disaster may:

(i) submit a timely application for renewal pursuant to Subsection (2)(a)(ii)(B); and

(ii) request that the application for renewal be conditionally approved, with the expiration date of the applicant's registration, license, or certification extended pursuant to this Subsection (7)(b), pending the completion of the continuing education requirement.

(b) Upon the division's approving a deferral of continuing education, the expiration date of the applicant's registration, license, or certification shall be extended 90 days, during which time the applicant shall:

(i) complete the continuing education required for the renewal; and

(ii) submit proof of the continuing education to the division.

R162-2g-306b. Notification of Changes.

(1) An individual registered, licensed, or certified under these rules shall notify the division of any status change, including the following:

(a) creation or termination of an affiliation, except as provided in this Subsection (2);

(b) change of name; and

(c) change of business, home, mailing, or e-mail address.

(2) An individual is not required to report the creation or termination of an affiliation that:

(a) facilitates a single transaction; and

(b) is not part of an ongoing business association.

(3) Notification procedure.

(a) To report a change of name, an individual shall complete a paper change form and attach to it official documentation such as a:

(i) marriage certificate;

(ii) divorce decree; or

(iii) driver license.

(b)(i) To report a change in affiliation or address, and individual shall complete and submit an electronic change form through RELMS.

(ii) A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

(c) All change forms shall be accompanied by a nonrefundable processing fee.

(4) Deadlines and effective dates.

(a)(i) An individual shall comply with the notification requirements outlined in this Subsection R162-2g-306b within ten business days of making a status change.

(ii) If a deadline for notification falls on a day when the division is closed, the deadline shall be extended to the next business day.

(b) Status changes are effective on the date the properly executed forms and appropriate fees are received by the

division.

R162-2g-307a. General Education Criteria Applicable to All Pre-Licensing Education and Continuing Education.

(1) A class hour is 60 minutes of which at least 50 minutes are instruction attended by the student.

(2) The prescribed number of class hours includes time for examinations.

(3) Experience may not be substituted for education, and education may not be substituted for experience.

R162-2g-307b. School Certification.

(1) Application. A school requesting certification shall:

(a) submit an application form as prescribed by the division, including:

(i) name, telephone number, email address, and address of:

(A) the school;

(B) the school director; and

(C) all owners of the school; and

(ii) as to each school director or owner, disclosure of criminal history and adverse regulatory actions;

(b) provide a description of:

(i) the type of school; and

(ii) the school's physical facilities;

(c) provide a statement outlining the:

(i) number of quizzes and examinations in each course offered;

(ii) grading system, including methods of testing and standards of grading;

(iii) requirements for attendance; and

(iv) school's refund policy.

(2) Standards for operation.

(a) All courses shall be taught in an appropriate classroom facility and not in a private residence, except for a course approved for distance education.

(b) A school shall teach the approved course of study as outlined in the state-approved outline.

(c) At the time of registration, a school shall provide to each student:

(i) the statement described in this Subsection (1)(c);

(ii) a copy of the qualifying questionnaire that the student will be required by the division to answer as part of the pre-licensing or precertification examination; and

(iii) a criminal history disclosure statement.

(d) A school shall require each student to attend 100% of the scheduled class time in order to earn credit for the course.

(e)(i) A school may not award credit to any student who fails the final examination.

(ii) A student who fails a school final examination must wait three days before retesting and may not retake the same final examination.

(iii) A student who fails a final examination a second time must wait two weeks before retesting and may not retake either exam that the student previously failed.

(iv) A student who fails a final exam a third time shall fail the course.

(f) A school may not allow a student to challenge a course or any part of a course by taking an exam in lieu of attendance.

(g) Credit hours.

(i) For a course that is taught outside of a college or university setting, one credit hour may be awarded for 50 minutes of instruction within a 60-minute period, allowing for a ten-minute break.

(ii) For a course that is taught in a college or university setting:

(A) one quarter hour is equivalent to 10 credit hours; and

(B) one semester hour is equivalent to 15 credit hours.

(iii) A school may not award more than eight credit hours per day per student.

(3) A school shall report to the division within 10 calendar days of:

(a) any change in the information provided pursuant to this Subsection (1)(a)(i); and

(b) a school director or owner being convicted, or entering a plea in abeyance or diversion agreement, as to a criminal offense, excluding class C misdemeanors.

(4)(a) A school certification is valid for two years from the date of issuance.

(b) To renew a school certification, an individual shall, prior to the date of expiration:

(i) submit a properly completed application as provided by the division; and

(ii) pay a nonrefundable applicable fee.

R162-2g-307c. Pre-licensing Course Certification.

(1) To certify a pre-licensing course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) a course outline, including:

(i) a description of the course;

(ii) the length of time to be spent on each subject area, broken into segments of no more than 30 minutes each; and

(iii) three to five learning objectives for every three hours;

(b) a description of any method of instruction that will be used other than lecture method, including:

(i) webinar;

(ii) satellite broadcast; or

(iii) other form of distance education;

(c) copies of at least three final examinations administered in the course and the answer keys that will be used to determine if a student passes the course;

(d) the school procedure for maintaining the security of the final exams and answer keys;

(e) the titles, authors, and publishers of all required textbooks;

(f)(i) the instructor(s) who will teach each class; and

(ii) evidence that each instructor is:

(A) certified by the division;

(B) qualified to serve as a guest lecturer; or

(C) a college or university faculty member who has academic training or appraisal experience satisfactory to the division and the board;

(g) a nonrefundable applicable fee; and

(h) a signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) name and license number of each student receiving education credit.

(2) Standards for approval of traditional classroom courses. Each course shall:

(a) meet the minimum standards set forth in the state-approved course outline governing the course, including minimum hourly requirements;

(b) be approved through the AQB course approval program;

(c) allow a maximum of 10% of the required class time for testing, including review test and final examination;

(d) use texts, workbooks, supplement pamphlets, and other materials that are appropriate and current in their

application to the required course outline.

(3) Standards for approval of distance education

(a) A distance education course shall:

(i) comply with this Subsection (2);

(ii) provide interaction between the student and instructor;

(iii) include a written examination personally proctored by an official approved by the presenting entity;

(iv) meet the course delivery requirements established by the AQB and the International Distance Education Certification Center; and

(v) offer at least 15 credit hours.

(b) A distance education course offered by a college or university may be deemed acceptable to meet the credit hour requirement if the course content is approved by:

(i) the AQB;

(ii) a state licensing jurisdiction; or

(iii) a college or university that:

(A) offers distance education programs in other disciplines; and

(B) is approved or accredited by:

(I) the Commission on Colleges;

(II) a regional or national accreditation association; or

(III) an accrediting agency that is recognized by the United States Secretary of Education.

(4) Within 10 business days after the occurrence of any material change in a course that could affect approval, the school shall give the division written notice of the change.

(5) A course certification is valid for no more than 24 months.

(6) Credit for non-certified pre-licensing education.

(a) Division certification is not required for a pre-licensing course that is offered by a school, as defined in Subsection R162-2g-102(17) as long as:

(i) the course content:

(A) meets the minimum standards set forth in the Utah state-approved course outline; and

(B) is approved by the AQB course approval program;

(ii) the course provides at least 15 credit hours, including examination(s);

(iii) a closed-book, closed-note final examination is administered at the end of each course;

(iv) students are not allowed to earn credit from the course provider by challenge examination without first attending the course;

(v) credit is not awarded for duplicate or highly comparable classes;

(vi) where multiple classes are offered, they represent a progression in a student's knowledge; and

(vii) in order to receive credit, a student is required to:

(A) attend 100% of the scheduled class hours;

(B) complete all required exercises and assignments; and

(C) pass the course final examination.

(b) Hourly credit for a course taken from a professional appraisal organization shall be granted according to the division approved list.

(c) An applicant who wishes to be awarded credit for non-certified pre-licensing education shall:

(i) provide to the division a list of the cours(es) taken, including:

(A) course title(s);

(B) name(s) of the sponsoring organization(s);

(C) number of classroom hours completed;

(D) date(s) of course completion; and

(E) evidence that the cours(es) meet the requirements of:

(I) the AQB; and

(II) if distance education, the International Distance Education Certification Center;

(ii) request review of the course by the division and board;

(iii) establish that the criteria outlined in this Subsection (6)(a) are met;

(iv) attest on a notarized affidavit that the courses have been completed as documented; and

(v) if requested by the division, provide proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

(7) Supervisory Appraiser and Appraiser Trainee Course. In order to obtain certification of the supervisory appraiser and appraiser trainee course, a course provider shall:

(a) comply with this Subsection (1); and

(b) sign a written attestation agreeing to provide a paper copy of the course manual to each attendee.

R162-2g-307d. Continuing Education Course Registration and Certification.

(1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is registered or certified prior to its being taught.

(2) To certify a continuing education course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d) identification of whether the method of instruction will be traditional education or distance education;

(e) title of the course;

(f) statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) course outline including:

(i) a description of the subject matter covered in each 15-minute segment; and

(ii) a minimum of one learning objective for every hour of class time;

(h) the name and certification number of each certified instructor who will teach the course;

(i) copies of all materials that will be distributed to the participants;

(j) the procedure for pre-registration;

(k) the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time;

(m) sample of the completion certificate;

(n) signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) names and license numbers of all students receiving continuing education credit;

(o) signed statement agreeing not to market personal sales products; and

(p) other information the division might require.

(3) Standards for approval of a certified course.

(a)(i) A distance education course shall:

(A) provide interaction between the student and instructor; and

(B) include a written examination that requires a student to demonstrate mastery and fluency.

(ii) The division may approve a distance education course offered by a college or university if the college or university:

(A) offers distance education programs in other disciplines; and

(B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or

(II) is approved by the International Distance Education Certification Center.

(b) The course topic must be AQB-approved.

(c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

(d) The completion certificate shall allow for entry of:

(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) course certification number and expiration date;

(viii) credit hours awarded; and

(ix) signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

(4) Non-certified continuing education credit. Except as provided in Subsection R162-2g-307d(1), the board may award continuing education credit on a case-by-case basis for the following:

(a) up to one-half of an individual's continuing education credit requirement for:

(i) participation, other than as a student, in appraisal educational processes and programs; or

(ii) teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education;

(b) service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:

(i) practicum course under this Subsection (3)(a); or

(ii) course under this Subsection (3)(b); and

(c) completion of any course that:

(i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and

(ii) is taught outside the state of Utah.

(5) Standards for approval of a registered course.

(a) A professional appraisal education organization may register a special event for continuing education, subject to the following conditions:

(i) the professional appraisal education organization shall submit a one-time application and registration fee to the division to register the organization as a qualified continuing education course provider and the special event for continuing education;

(ii) the division may grant approval of the special event based on the demonstrated experience of the professional appraisal education organization in providing, monitoring, and supervising quality professional course offerings.

(b) The registered organization is solely responsible for and accountable to the division:

(i) for the selection of appraisal instructors who are subject matter experts and industry qualified in the course(s) or segment of the course(s) they teach;

(ii) to ensure that:

(A) course instructors have subject matter expertise in the content area they are instructing; and

(B) the course content of classes taught by both appraiser and non-appraiser course instructors is directly industry pertinent, relevant, and beneficial to and enhances the professional skills of the attending appraisers, and promotes the protection and wellbeing of the industry and the general public;

(iii) to monitor the attendance of each appraiser during the presentation of the course by taking and maintaining a list of attendees actually present during the presentation to ensure that an appraiser actually attends each CE course segment before providing a CE certificate or CE credit to the appraiser; and

(iv) to ensure that the registered course complies with the general criteria applicable to continuing education set forth in sections R162-2g-307a and R162-2g-307b.

(6)(a) The special event registered course may last for a maximum of seven consecutive days.

(b) The special event registered course is a single, one-time event and may not be repeated unless the professional appraisal education organization submits to the division an application and registration fee and receives division approval for a subsequent, single, one-time event.

(c) A professional appraisal education organization shall submit a separate course application for each course taught at the special event, however, only a single application fee is required to be paid to the division for each special event.

(d) The division maintains a fee schedule based on the total number of CE hours awarded for a CE course. The application and registration fee for a special event course is the fee from the division fee schedule.

R162-2g-307e. Instructor Certification for Pre-licensing Education.

(1) To certify as a pre-licensing education instructor, an individual shall:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);

(b) submit a completed application as provided by the division;

(c) demonstrate knowledge of the subject matter to be taught as evidenced by:

(i) current, active licensure or certification as applicable to the pre-licensing course proposed to be taught;

(ii) a minimum of five years active experience in appraising; and

(iii)(A) college or other appropriate courses specific to the topic proposed to be taught; or

(B) other experience acceptable to the board in the topic proposed to be taught;

(d) if the individual proposes to teach a course in USPAP, evidence that the individual is an AQB-certified USPAP instructor; and

(e) pay a nonrefundable application fee.

(2) A pre-licensing instructor certification is valid for 24 months from the date of issuance.

(3) To renew a pre-licensing instructor certification, an individual shall:

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

(b) evidence having taught at least 20 hours of in-class instruction in certified course(s) during the preceding term of certification;

(c) evidence having attended a real estate instructor

development workshop sponsored or approved by the division during the preceding two years; and

(d) pay a nonrefundable application fee.

(4)(a) To reinstate an expired pre-licensing instructor certification within 30 days following the expiration date, an individual shall:

(i) comply with this Subsection (3); and

(ii) pay a nonrefundable late fee.

(b) To reinstate an expired pre-licensing instructor certification after 30 days and within six months following the expiration date, an individual shall:

(i) comply with this Subsection (3);

(ii) pay a nonrefundable reinstatement fee; and

(iii) submit proof of having completed six classroom hours of education related to real estate appraisal or teaching techniques.

(c) After a pre-licensing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

(5) A certified instructor shall comply with the reporting requirements of Section 61-2g-306(3).

R162-2g-307f. Instructor Certification for Continuing Education.

(1) Except for the limited circumstances provided for in Section R162-2g-307d for special continuing education events conducted by a professional appraisal education organization, a continuing education course that is required to be certified shall be taught by a certified instructor.

(2) To obtain a continuing education instructor certification, and individual shall, at least 30 days prior to the date on which instruction is proposed to begin:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);

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

(c) evidence:

(i) at least three years of full-time experience in the course subject;

(ii) college-level education related to the course subject; or

(iii) a combination of experience and education acceptable to the division;

(d) evidence:

(i) at least 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 the division's Instructor Development Workshop;

(e) provide a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(f) provide a signed statement agreeing not to market personal sales products;

(g) provide any other information the division requires; and

(h) pay a nonrefundable application fee.

(3) A continuing education instructor certification is valid for two years.

(4) To renew a continuing education instructor certification, an individual shall, prior to the date of expiration:

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

(b)(i) evidence having taught a minimum of 12 continuing education credit hours during the past term of certification; or

(ii) provide a written explanation outlining the reason for not meeting the requirement having taught 12 continuing education credit hours and provide evidence satisfactory to the division that the applicant maintains an appropriate level of expertise; and

(c) pay a nonrefundable renewal fee.

(5)(a) To reinstate an expired continuing instructor certification within 30 days following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable late fee.

(b) To reinstate an expired continuing instructor certification after 30 days and within six months following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable reinstatement fee;

(c) After a continuing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

R162-2g-308. Application for a Six-Month Temporary Permit.

(1) A non-resident of this state who is licensed or certified in another state and who wishes to apply for a six-month temporary permit to perform one or more specific appraisal assignments in Utah shall:

(a) evidence that each specific appraisal assignment is covered by a contract to provide appraisals;

(b) submit an application as provided by the division and including the following:

(i) name of the client;

(ii) specific property address(es) to be appraised;

(iii) type(s) of property being appraised; and

(iv) estimated time to complete each assignment;

(c) complete and submit a qualifying questionnaire as provided by the division;

(d) sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any non-criminal proceeding arising out of the applicant's practice as an appraiser in this state;

(e) pay a nonrefundable application fee in the amount established by the division; and

(f) provide the starting date of the appraisal assignment for which the temporary permit is being sought.

(2)(a) A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six-month period if the assignment(s) for which the permit is issued have not been completed within the original six-month term of the temporary permit.

(b) A temporary permit may be extended by submitting the forms required by the division.

R162-2g-310. Application for Licensure or Certification Through Reciprocity.

An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

(1) The applicant shall provide evidence that:

(a) the state in which the applicant is licensed requires appraisal pre-licensing education that is:

(i) approved by that state; and

(ii) substantially equivalent in number to the hours required for the license or certification for which the applicant is applying in Utah;

(b) the applicant's pre-licensing education included either:

(i) the 15-hour National USPAP Course; or

(ii) equivalent education as determined through the course approval program of the AQB; and

(c) the applicant has passed an examination that has

been approved by the AQB for the license or certification for which the applicant is applying.

(2) The applicant shall:

(a) obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder; and

(b) sign an attestation that the applicant understands and will abide by both the statute and the rules.

(3) If the applicant resides outside of the state of Utah, the applicant shall sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any noncriminal proceeding arising out of the applicant's practice as an appraiser in this state.

(4) The board may not issue a license or certification to an applicant who has been convicted of a criminal offense involving moral turpitude relating to the applicant's ability to provide services as an appraiser.

R162-2g-311. Scope of Authority.

(1) Trainees.

(a) An individual who has properly qualified as a trainee pursuant to Subsection R162-2g-302 may perform appraisal-related duties within the competence and scope of authority of the state-certified supervisory appraiser as follows:

(i) participating in property inspections;

(ii) measuring or assisting in the measurement of properties;

(iii) performing appraisal-related calculations;

(iv) participating in the selection of comparables for an appraisal assignment;

(v) making adjustments to comparables; and

(vi) drafting or assisting in the drafting of an appraisal report.

(b) The trainee may have more than one supervisory appraiser.

(c) The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of the activities identified in this Subsection (1)(a), within the following limitations:

(i) As to a minimum of the trainee's first 35 inspections of residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(ii) After the trainee's first 35 inspections, the supervising appraiser shall determine whether the trainee has demonstrated sufficient competency to continue making inspections of residential properties without being accompanied by the supervising appraiser.

(iii) As to the trainee's first 20 inspections of non-residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified general appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(d) A trainee may not:

(i) solicit or accept an assignment on behalf of anyone other than:

(A) the trainee's supervisor; or

(B) the supervisor's appraisal firm;

(ii) sign an appraisal report or discuss an appraisal assignment with anyone other than:

(A) the appraiser responsible for the assignment;

(B) state enforcement agencies;

(C) third parties as may be authorized by due process of law; and

(D) a duly authorized professional peer review committee.

(e) The following are not subject to the scope of authority limitations of this Subsection (1):

(i) full-time elected county assessors; and

(ii) any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll.

(2) State-licensed appraisers. In a federally-related transaction, state-licensed appraisers may appraise:

(a) non-complex one- to four-residential units having a transaction value of less than $1,000,000;

(b) complex one- to four- residential units having a transaction value of less than $250,000; and

(c) vacant or unimproved land that is utilized for one- to four-family purposes, or for which the highest and best use is one- to four-family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

(3) State-licensed appraisers and state-certified residential appraisers may not perform appraisals of the following:

(a) subdivisions for which:

(i) a development analysis/appraisal is necessary; or

(ii) a discounted cash flow analysis is required by the terms of the assignment; and

(b) vacant land if the highest and best use of the land is for five or more one- to four-family units.

R162-2g-502a. Standards of Conduct and Practice.

(1) Affirmative duties in general. A person registered, licensed, or certified by the division shall:

(a) if employing an unlicensed assistant who is not registered as a trainee pursuant to Subsection R162-2g-302:

(i) actively supervise the unlicensed assistant; and

(ii) ensure that the assistant performs only clerical duties, including:

(A) typing research notes or reports completed by a trainee or an appraiser;

(B) taking photographs of properties; and

(C) obtaining copies of public records;

(b)(i) except as provided in this Subsection (2)(a), comply with the current edition of USPAP; and

(ii) observe the advisory opinions of USPAP;

(c) in order to authorize another individual to sign an appraisal report on behalf of the individual who completes the report:

(i) grant authority to the signer in writing;

(ii) limit the signing authority to a specific property address;

(iii) explicitly disclose within the appraisal report that the signer is authorized by the appraiser to sign the report on the appraiser's behalf;

(iv) attach a copy of the written permission required pursuant to this Subsection (1)(c)(i) to the report; and

(v) ensure that the signer signs the appraiser's name, followed by the word "by," and then followed by the signer's own name;

(d) if using a digital signature in place of a handwritten signature, ensure that:

(i) the software program that generates the digital signature has a security feature; and

(ii) no one other than the appraiser has control of the signature;

(e) retain a photocopy or other exact copy of each report as it is provided to the client, including the appraiser's

signature;

(f) analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), property owner, or other verifiable source(s);

(g)(i) include in each appraisal report a statement indicating whether or not the subject property was inspected as part of the appraisal process; and

(ii) if any inspections were done, include the following information concerning each inspection:

(A) the names of all appraisers and trainees who participated in the inspection;

(B) whether the inspection was an exterior inspection only or both an exterior and an interior inspection; and

(C) the date that the inspection was performed; and

(h) unless Subsection (2)(b) applies, respond within ten business days to division notification:

(i) of a complaint against the individual; or

(ii) that information is needed from the individual.

(2) Exceptions.

(a) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:

(i) a division staff member or employee;

(ii) a member of the experience review committee as appointed and approved by the board;

(iii) a member of the technical review panel as appointed and approved by the board;

(iv) a hearing officer;

(v) a member of a county board of equalization;

(vi) an administrative law judge;

(vii) a member of the Utah State Tax Commission; or

(viii) a member of the board.

(b) If a deadline for response under this Subsection (1)(h) falls on a day when the division is closed, the deadline shall be extended to the next business day.

(3) A trainee shall:

(a) using forms provided by the division, maintain a separate log of experience hours for each supervising appraiser with whom the trainee works; and

(b) include in each log the following information for each appraisal:

(i) file number;

(ii) report date;

(iii) subject address;

(iv) client name;

(v) type of property;

(vi) report form number or type;

(vii) number of work hours;

(viii) description of work performed by the trainee; and

(ix) scope of the review and supervision of the supervising appraiser.

(4)(a) A supervisory appraiser shall delegate to a trainee only such duties as the trainee is authorized to perform under Subsection R162-2g-311(1).

(b) A supervisory appraiser shall directly train and supervise the trainee in the performance of assigned duties by:

(i) critically observing and directing all aspects of the appraisal process;

(ii) accepting full responsibility for the appraisal and the contents of the appraisal report by signing and certifying the appraisal complies with USPAP; and

(iii) reviewing and signing the trainee appraisal reports.

(c) A supervisory appraiser shall personally inspect:

(i) each property that is appraised with a trainee until the supervisory appraiser determines the trainee is competent to inspect the property in accordance with the competency rule of USPAP for the property type, and the trainee has performed at least:

(A) 100 residential inspections as provided in Subsection R162-2g-311(1)(b)(i); and

(B) 20 non-residential inspections as provided in Subsection R162-2g-311(1)(b)(ii); and

(ii) any property for which the appraisal report scope of work or certification requires appraiser inspection.

(d) A supervisory appraiser shall be state-certified and in good standing with the division for a period of at least three years prior to being eligible to become a supervisory appraiser.

(e) An appraiser may not act as a supervisory appraiser if the appraiser has been subject to a disciplinary action in any jurisdiction:

(i) within the three year period preceding the date on which the appraiser proposes to act as a supervisor; and

(ii) where the supervisory appraiser's legal eligibility to engage in the appraisal practice was impacted or impaired.

(f) A supervisory appraiser subject to a disciplinary action will be considered to be in good standing three years after the successful completion or termination of the sanction imposed against the appraiser.

(g) A supervisory appraiser shall comply with the competency rule of USPAP for the property type and geographic location for which the trainee appraiser is being supervised.

(h) Although a trainee is permitted to have more than one supervisory appraiser, a supervisory appraiser may not supervise more than three trainees at one time, unless a division program provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for supervisory appraisers.

(i) An appraisal experience log shall be maintained jointly by the supervisory appraiser and the trainee. It is the responsibility of both the supervisory appraiser and the trainee to ensure the experience log is accurate, current, and complies with division requirements.

(5) A school shall:

(a) maintain a record of each student's attendance for a minimum of five years after the student enrolls;

(b) display the certification number of all continuing education courses in advertising and marketing;

(c) as to each student who provides the school with an accurate name or license number, bank course completion information:

(i) within 10 days after the end of a course offering; and

(ii) to the database specified by the division;

(d) upon request of the division, substantiate any claim made in advertising or marketing;

(e) within 15 calendar days of any material change in the information outlined in R162-2g-307b(1), provide to the division written notice of the change;

(f) with regard to the criminal history disclosure required under R162-2g-307b(2)(c)(iii):

(i) obtain each student's signature before allowing the student to participate in course instruction;

(ii) retain each signed criminal history disclosure for a minimum of two years; and

(iii) make any signed criminal history disclosure available to the division upon request;

(g) maintain a high quality of instruction;

(h) adhere to all state laws and administrative rules regarding school and instructor certification;

(i) provide the instructor(s) for each course with the required course content outline;

(j) require instructors to adhere to the approved course content;

(k) comply with a division request for information within 10 business days of the date of the request; and

(l) verify that the material is current in any course taught

on:
(i) Utah statutes;
(ii) Utah administrative rules;
(iii) Federal laws; and
(iv) Federal regulations.
(6) An instructor shall adhere to the approved outline for any course taught.

R162-2g-502b. Prohibited Conduct.
(1) An individual registered, licensed, or certified by the division may not:
(a) release to a client a draft report of a one- to four-unit residential real property;
(b) release to a client a draft report of a property other than a one- to four-unit residential real property unless:
(i) the first page of the report prominently identifies the report as a draft;
(ii) the draft report is signed by the appraiser; and
(iii) the appraiser complies with USPAP in the preparation of the draft report;
(c) affix a signature to an appraisal report by means of a signature stamp; or
(d) sign a blank or partially completed appraisal report that will be completed by anyone other than the appraiser who has signed the report;
(e) sign an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property; or
(f) split appraisal fees with any person who is not a state-licensed or state-certified appraiser, except that a supervising appraiser may pay a trainee reasonable compensation proportionate to the lawful services actually performed by the trainee in connection with appraisals.
(2) A trainee may not:
(a) solicit a client to address an engagement letter directly to the trainee; or
(b) accept payment for appraisal services from anyone other than:
(i) the trainee's supervisor; or
(ii) an appraisal or government entity with which the trainee is affiliated.
(3) A supervising appraiser may not:
(a) sign a report that is completed in response to an engagement letter that is addressed to a trainee;
(b) sign an appraisal report as the supervising appraiser without having given adequate supervision to the trainee, appraiser, or assistant being supervised.
(4) A state-licensed appraiser may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.
(5) A school may not:
(a) in advertising and marketing:
(i) make a misrepresentation about any course of instruction;
(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession;
(iii) disparage a competitor's services or methods of operation;
(iv) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;
(b) attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank;
(c) accept payment from a student without first providing to that student the information outlined in R162-2g-307b(2)(c);
(d) continue to operate after the expiration date of the school certification without renewing;
(e) continue to offer a course after its expiration date without renewing;
(f) allow an instructor whose instructor certification has expired to continue teaching;
(g) allow an individual student to earn more than eight credit hours of education in a single day;
(h) award credit to a student who has not complied with the minimum attendance requirements;
(i) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;
(j) give valuable consideration to a person licensed with or certified by the division under Section 61-2g for referring students to the school;
(k) accept valuable consideration from a person licensed with or certified by the division under Section 61-2g for referring students to a licensed or certified appraiser; or
(l) require a student to attend any program organized for the purpose of solicitation.
(6) A continuing education provider may not:
(a) in advertising and marketing:
(i) make a misrepresentation about any course of instruction;
(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession; or
(iii) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;
(b) continue to offer a course after its expiration date without renewing;
(c) allow an instructor whose instructor certification has expired to continue teaching;
(d) allow an individual student to earn more than eight credit hours of education in a single day;
(e) award credit to a student who has not complied with the minimum attendance requirements; or
(f) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course.
(7) An instructor may not:
(a) continue to teach any course after the course has expired and without renewing the course certification; or
(b) continue to teach any course after the individual's certification has expired and without renewing the instructor certification.

R162-2g-504. Administrative Proceedings.
(1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order shall be conducted as a formal adjudicative proceeding.
(2) Informal adjudicative proceedings.
(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.
(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Appraiser Licensing and Certification Act or by these rules.
(3)(a) A hearing before the board will be held in:
(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;
(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;
(iii) a case where the division seeks disciplinary action

pursuant to Sections 61-2g-501 and 502 against a trainee or an appraiser; and

(iv) an appeal from an automatic revocation under Section 61-2g-302(2)(d), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application:

(i) that is denied by the division on the grounds that the instructor's attestation to upstanding moral character is false;

(ii) for an initial appraiser license or certification that is denied by the board on the recommendation of the experience review committee; and

(iii) for a temporary permit that is denied by the division for any reason.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of a trainee registration or an appraiser license or certification by the division;

(ii) the issuance or renewal of an appraisal course, school, or instructor certification;

(iii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iv) the denial of renewal or reinstatement of a trainee registration or an appraiser license or certification for failure to complete any continuing education required by statute or rule; and

(v) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules.

(4)(a) Request for agency action. The following applications shall be deemed a request for agency action:

(i) registration as a trainee;

(ii) licensure or certification as an appraiser;

(iii) certification of a course, school, or instructor; and

(iv) issuance of a temporary permit.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against a trainee, an appraiser, or the holder of a temporary permit requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(5) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in this Subsection (6)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2g-504, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division pursuant to Subsection R162-2g-306b.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(6) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (6)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iii) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(iv)(A) The presiding officer, upon a determination of

good cause, may require a respondent to file a witness and exhibit list.

(B) Failure to comply with a requirement to file a witness and exhibit list may result in the exclusion of any witness or exhibit not disclosed.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2g-601. Appendices.

Appendix 1. Residential Experience Hours Schedule. The hours shown in the following schedule shall be awarded to form appraisals. Fifteen hours may be added to the hours shown if the appraisal is a narrative appraisal instead of a form appraisal.

TABLE

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade:	
(i) living area less than 4,000 square feet, including a site	Up to 10 hours (Expected avg hrs 7.5)

Part 1

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5

(ii) living area 4,000 square feet or more, including a site	Up to 10 hours

Part 2

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.75
Interior Inspection	0.75
Market Conditions	0.75
Land Value Estimate	0.75
Improvement Cost Estimate	0.75
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(b) multiple one-unit dwellings in the same subdivision or condominium project, which dwellings are substantially similar:	
(i) 1-25 dwellings	7 hours per dwelling, up to a maximum of 42 hours
(ii) over 25 dwellings	70 hours maximum
(c) two to four-unit dwelling	

Part 3

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(d) employee relocation counsel reports completed on currently accepted Employee Relocation Counsel form	Up to 10 hours
(e) residential lot, 1-4 unit	Up to 7 hours

Part 4

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Site Inspection	0.25
Market Conditions	0.75
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(f) multiple lots in the same subdivision, which lots are substantially similar	
(i) 1-25 lots	5 hours per lot, up to a maximum of 30 hours
(ii) Over 25 lots	50 hours maximum
(g) small parcel of less than 20 acres	up to 6.5 hours

Part 5

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Site Inspection	0.25
Market Conditions	0.75
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(h) vacant land, 20-640 acres	20-40 hours, per board decision
(i) recreational, farm, or timber acreage suitable for a house site:	
(i) up to 10 acres	10 hours
(ii) 10 acres or more	15 hours
(j) all other unusual structures or acreage which are much larger or more complex than typical properties	5-35 hours, per board decision
(k) review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	10-50 hours

Appendix 2. General Experience Hours Schedule. All appraisal reports claimed for property types identified in sections (a) through (k) of the following schedule shall be narrative appraisal reports. Experience hours listed in this schedule may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the appraiser experience log submitted by the applicant, and if the applicant maintains in the workfile for the appraisal an explanation as to why the extra hours are claimed.

TABLE

Property Type	Hours that may be earned
(a) Apartment buildings:	
(i) 5-100 units	40 hours
(ii) over 100 units	50 hours
(b) hotel or motels:	
(i) 50 units or fewer	30 hours
(ii) 51-150 units	40 hours
(iii) over 150 units	50 hours
(c) nursing home, rest home, care facilities:	
(i) fewer than 80 beds	40 hours
(ii) 80 beds or more	50 hours
(d) industrial or warehouse building:	

(i) smaller than 20,000 square feet	30 hours
(ii) 20,000 square feet or more, single tenant	40 hours
(iii) 20,000 square feet or more, multiple tenants	50 hours
(e) office buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) 10,000 square feet or more, single tenant	40 hours
(iii) 10,000 square feet or more, multiple tenants	50 hours
(f) entire condominium projects, using income approach to value:	
(i) 5- to 30-unit project	30 hours
(ii) 31- or more-unit project	50 hours
(g) retail buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) 10,000 square feet or more, single tenant	40 hours
(iii) 10,000 square feet or more, multiple tenants	50 hours
(h) commercial, multi-unit, industrial, or other nonresidential use acreage:	
(i) 1 to less than 100 acres	20-40 hours
(ii) 100 acres or more, income approach to value	50-60 hours
(i) all other unusual structures or assignments that are much larger or more complex than per the properties described in (a) to (h) herein.	5 to 100 hours board decision
(j) entire subdivisions or planned unit developments (PUDs):	
(i) 1- to 25-unit subdivision or PUD	30 hours
(ii) over 25-unit subdivision or PUD	50 hours
(k) feasibility or market analysis	5 to 100 hours, each per board decision, up to a maximum of 500 hours

(l) farm and ranch appraisals:		Form
Narrative		
(i) irrigated cropland, pasture other than rangeland:		
(A) 1 to less than 11 acres	10 hrs	15 hrs
(B)11-less than 40 acres	12.5 hrs	20 hrs
(C)40-less than 160 acres	15 hrs	25 hrs
(D)160-less than 1280 acres	25 hrs	40 hrs
(E) 1280 acres or more	40 hrs	50 hrs
(ii) dry farm:		
(A) 1 to less than 1280 acres	15 hrs	25 hrs
(B) 1280 acres or more	20 hrs	40 hrs
(m) Improvements on properties other than a rural residence, maximum 10 hours:		
(i) dwelling	5 hrs	5 hrs
(ii) shed	2.5 hrs	2.5 hrs
(n) cattle ranches		
(i) 0-200 head	15 hrs	20 hrs
(ii) 201-500 head	25 hrs	30 hrs
(iii) 501-1000 head	30 hrs	40 hrs
(iv) more than 1000 head	40 hrs	50 hrs
(o) sheep ranches		
(i) 0-2000 head	25 hrs	30 hrs
(ii) more than 2000 head	35 hrs	45 hrs
(p) dairy, including all improvements except a dwelling		
(i) 0-100 head	20 hrs	25 hrs
(ii) 101-300 head	25 hrs	30 hrs
(iii) more than 300 head	30 hrs	35 hrs
(q) orchards		
(i) up to 50 acres	30 hrs	40 hrs
(ii) more than 50 acres	40 hrs	50 hrs
(r) rangeland/timber		
(i) 0-640 acres	20 hrs	25 hrs
(ii) more than 640 acres	30 hrs	35 hrs
(s) poultry		
(i) 0-100,000 birds	30 hrs	40 hrs
(ii) more than 100,000 birds	40 hrs	50 hrs
(t) mink		
(i) 0-5000 cages	30 hrs	35 hrs
(ii) more than 5000 cages	40 hrs	50 hrs
(u) fish farm	40 hrs	50 hrs
(v) hog farm	40 hrs	50 hrs
(w) review of appendix 2 appraisals with no opinion of value developed as part of the review, performed in conjunction with investigations by government agencies	20-100 hours	

Appendix 3. Mass Appraisal Experience Hours Schedule.

TABLE

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade living area less than 4,000 square feet:	

Part 1

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5

(b) one-unit dwelling, above-grade living area area 4,000 square feet or more:

Part 2

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.75
Interior Inspection	0.75
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.75
Improvement Cost Estimate	0.75
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(c) two to four unit dwelling:

Part 3

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(d) commercial and industrial buildings, depending on complexity:

Part 4

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5-4.5
Interior Inspection	0.5-9.5
CAMA Data Input and Review	0.5
Market Conditions	1.5
Land Value Estimate	2.0
Improvement Cost Estimate	2.0
Income Value Estimate	2-15
Sales Comparison Value Estimate	2-15
Final Reconciliation	0.5
Appraisal Report Preparation	1-10
Restricted Appraisal Report Preparation	0.5

(e) agricultural and other improvements, depending on complexity:

Part 5

Task	Hours
Highest and Best Use Analysis	0.25-0.5
Neighborhood Description	0.5
Exterior Inspection	0.25-0.5
Interior Inspection	0.5-1
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5-1
Improvement Cost Estimate	0.5-1
Income Value Estimate	1-3
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(f) vacant land, depending on complexity:

Part 6

Task	Hours
Highest and Best Use Analysis	0.25-0.5
Neighborhood Description	0.5
Site Inspection	0.25
Land Segregation	0.25
CAMA Data Input and Review	0.5
Inspection	0.25-2.25
Market Conditions	0.75
Income Value Estimate	1-3
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(g) land valuation guideline (development):	
(i) 25 or fewer parcels	10 hours
(ii) 26 to 500 parcels	30 hours
(iii) over 500 parcels	25 additional hours for each 500 parcels, up to a maximum of 125 hours for each guideline
(h)land valuation guideline (update):	
(i) 25 or fewer parcels	1 hour
(ii) 26 to 500 parcels	3 hours
(iii) over 500 parcels	2.5 additional hours for each 500 parcels, up to a maximum of 12.5 hours for each guideline
(i) assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation:	
(i) base study of 100 reviewed sales	125 hours
(ii) additional increments of 100 sales	25 additional hours for each 100 additional sales, up to a maximum of 375 hours for each study
(j) multiple regression model, development and implementation:	
(i) fewer than 5,000 parcels	100 hours
(ii) additional increments of 500 parcels	5 additional hours for each additional 500 parcels, up to a maximum of 375 hours for each regression model
(k) industry depreciation study and analysis	5 to 40 hours
(l) reviews of "land value in use" in accordance with U.C.A. Section 59-2-505:	
(i)office review only	0.25 hours
(ii) field review	0.5 hours
(m) natural resource properties, depending on complexity:	
(i) sand and gravel	1-20 hours per site
(ii) mine	1-110 hours
(iii) oil and gas	1-50 hours per site
(n) pipelines and gas distribution properties, depending on complexity	10-40 hours
(o) telephone and electrics properties, depending on complexity	5-80 hours
(p) airline and railroad properties, depending on complexity	10-80 hours
(q) appraisal review/audit, depending on complexity	2.5-125 hours
(r) capitalization rate study	10 to 100 hours
(s) mineral pricing study	10 to 100 hours
(t) effective tax rate study	10 to 100 hours
(u) Ad valorem centrally assessed property tax appeal preparation	5 to 125 hours

Appendix 4. Appraiser Education.

TABLE 1

Required Core Curriculum

Trainee Appraiser	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Trainee Appraiser Education Requirements	75 Total Hours
Licensed Appraiser	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Residential Market Analysis and Highest and Best Use	15 Hours
Residential Appraiser Site Valuation and Cost Approach	15 Hours
Residential Sales Comparison and Income Approaches	30 Hours
Residential Report Writing and Case Studies	15 Hours
Licensed Residential Education Requirements	150 Total Hours
Certified Residential	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Residential Market Analysis and Highest and Best Use	15 Hours
Residential Appraiser Site Valuation and Cost Approach	15 Hours
Residential Sales Comparison and Income Approaches	30 Hours
Residential Report Writing and Case Studies	15 Hours
Statistics, Modeling and Finance	15 Hours
Advanced Residential Applications and Case Studies	15 Hours
Appraisal Subject Matter Electives (May include hours over minimum shown above in other modules)	20 Hours
Certified Residential Education Requirements	200 Total Hours
Certified General*	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
*General Appraiser Market Analysis and Highest and Best Use	30 Hours
Statistics, Modeling and Finance	15 Hours
*General Sales Comparison and Income Approaches	30 Hours
*General Appraiser Site Valuation and Cost Approach	30 Hours
General Appraiser Income Approach	60 Hours
*General Appraiser Report Writing and Case Studies	30 Hours
Appraisal Subject Matter Electives (May include hours over minimum shown above in other modules)	30 Hours
Certified General Education Requirements	300 Total Hours

*The four Certified General courses identified with an asterisk * may substitute for the equivalent four Licensed Appraiser or Certified Residential courses when a candidate provides proof of completion of these courses when applying for a Licensed or Certified Residential appraisal credential.

TABLE 2

Continuing Education Topics (Division Certification Required)

(1) Ad valorem taxation
(2) Arbitration, dispute resolution
(3) Courses related to the practice of real estate appraisal or consulting
(4) Development cost estimating
(5) Ethics and standards of professional practice, USPAP
(6) Land use planning, zoning
(7) Management, leasing, timesharing
(8) Property development, partial interests
(9) Real estate law, easements, and legal interests
(10) Real estate litigation, damages, condemnation
(11) Real estate financing and investment
(12) Real estate appraisal related computer applications
(13) Real estate securities and syndication
(14) Developing opinions of real property value in appraisals that also include personal property and/or business value
(15) Seller concessions and impact on value
(16) Energy efficient items and "green building" appraisals

KEY: real estate appraisals, school certification, instructor certification
December 27, 2017 **61-2g-201(2)(h)**
Notice of Continuation August 18, 2016 **61-2g-202(1)**
61-2g-205(5)(c)
61-2g-307(3)
61-2g-401(5)

R277. Education, Administration.
R277-419. Pupil Accounting.
R277-419-1. 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)(e), which directs the Board to establish rules and standards regarding:

(i) cost-effectiveness;

(ii) school budget formats; and

(iii) financial, statistical, and student accounting requirements;

(d) Subsection 53A-1-404(2), which requires a local school board's auditing standards to include financial accounting and student accounting;

(e) Subsection 53A-1-301(3)(d), which requires the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs; and

(f) Section 53A-3-404, which requires annual financial reports from all school districts.

(2) The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-2. Definitions.

(1) "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.

(2) "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways in the eight areas of study.

(3) "Blended learning program" means a program under the direction of an LEA:

(a) where a student learns at least in part:

(i) at a supervised brick and motar location away from a student's home; and

(ii) through an online delivery; and

(b) that may include some element of student control over time, place, or path, or pace.

(4) "Brick and mortar school" means a traditional school or traditional school building.

(5) "Competency based learning program" means an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

(6) "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.

(7) "Data Clearinghouse" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(8) "Distance learning program" means a program, under the direction of an LEA, in which students receive educational services in a location other than a brick and mortar school, and may include educational services delivered over the internet.

(9) "Early graduation student" means a student who has an early graduation student education plan as described in Rule R277-703.

(10) "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Subsection R277-419-5.

(11) "Enrollment verification data" includes:

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

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

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English learner plan.

(12) "Face-to-face learning program" means a program within an LEA that consists of eligible, enrolled public school students who physically attend school in a brick and mortar school.

(13)(a) "Home school" means the formal instruction of children in their homes instead of in an LEA.

(b) The differences between a home school student and an online student include:

(i) an online student may receive instruction at home, but the student is enrolled in a public school that follows state Core Standards;

(ii) an online student is:

(A) subject to laws and rules governing state and federal mandated tests; and

(B) included in accountability measures;

(iii) an online student receives instruction under the direction of a highly qualified, licensed teacher who is subject to the licensure requirements of R277-502 and fingerprint and background checks consistent with R277-516 and R277-520;

(iv) instruction delivered in a home school course is not eligible to be claimed in membership of an LEA and does not qualify for funding under the Minimum School Program in Title 53A, Chapter 17a, Minimum School Program Act.

(14) "Home school course" means instruction:

(a) delivered in a home school environment where the curriculum and instruction methods, evaluation of student progress or mastery, and reporting, are provided or administered by the parent, guardian, custodian, or other group of individuals; and

(b) not supervised or directed by an LEA.

(15)(a) "Influenza pandemic" or "pandemic" means a global outbreak of serious illness in people.

(b) "Influenza pandemic" or "pandemic" may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

(16) "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

(17) "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

(18)(a) "Membership" means a public school student is on the current roll of a public school class or public school as of a given date.

(b) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(c) Removal from the roll does not mean that an LEA should delete the student's record, only that the student should no longer be counted in membership.

(19) "Minimum School Program" means the same as that term is defined in Section 53A-17a-103.

(20) "Nontraditional Program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through a:

(a) distance learning program;

(b) online learning program;
(c) blended learning program; or
(d) competency based learning program.
(21) "Online learning program" means a program:
(a) that is under the direction of an LEA; and
(b) in which students receive educational services primarily over the internet.
(22) "Private school" means an educational institution that:
(a) is not an LEA;
(b) is owned or operated by a private person, firm, association, organization, or corporation; and
(c) is not subject to governance by the Board consistent with the Utah Constitution.
(23) "Program" means a course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.
(24) "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.
(25) "Qualifying school age" means:
(a) a person who is at least five years old and no more than 18 years old on or before September 1;
(b) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1;
(c) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.
(26) "Retained senior" means a student beyond the general compulsory school age who is authorized at the discretion of an LEA to remain in enrollment as a high school senior in the year(s) after the student's cohort has graduated due to:
(a) sickness;
(b) hospitalization;
(c) pending court investigation or action; or
(d) other extenuating circumstances beyond the control of the student.
(27) "S1" means the record maintained by the Superintendent containing individual student demographic and school membership data in a Data Clearinghouse file.
(28) "S2" means the record maintained by the Superintendent containing individual student data related to participation in a special education program in a Data Clearinghouse file.
(29) "S3" means the record maintained by the Superintendent containing individual student data related to participation in a YIC program in a Data Clearinghouse file.
(30) "School" means an educational entity governed by an LEA that:
(a) is supported with public funds;
(b) includes enrolled or prospectively enrolled full-time students;
(c) employs licensed educators as instructors that provide instruction consistent with Section R277-502;
(d) has one or more assigned administrators;
(e) is accredited consistent with Section R277-410-3; and
(f) administers required statewide assessments to the school's students.
(31) "School day" means a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the requirements described in Section R277-419-4.
(32) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.
(33) "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.
(34) "School year" means the 12 month period from July 1 through June 30.
(35) "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.
(36) "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.
(37) "SSID" means Statewide Student Identifier.
(38) "Unexcused absence" means an absence charged to a student when:
(a) the student was not physically present at school at any of the times attendance checks were made in accordance with Subsection R277-419-6(3); and
(b) the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.
(39) "Year end upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the Superintendent for the prior school year.
(40) "Youth in custody (YIC)" means a person under the age of 21 who is:
(a) in the custody of the Department of Human Services;
(b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or
(c) being held in a juvenile detention facility.

R277-419-3. Schools and Programs.
(1)(a) The Superintendent shall provide a list to each school detailing the required accountability reports and other state-mandated reports for the school type and grade range.
(b) All schools shall submit a Clearinghouse report to the Superintendent.
(c) All schools shall employ at least one licensed educator and one administrator.
(2)(a) A student who is enrolled in a program is considered a member of a public school.
(b) The Superintendent may not require programs to receive separate accountability and other state-mandated reports.
(c) A student reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of the LEA's school of enrollment.
(d) A course taught at a program shall be credited to the appropriate school of enrollment.
(3) A private school or program may not be required to submit data to the Superintendent.
(4) A private school or program may not receive annual accountability reports.

R277-419-4. Minimum School Days.
(1)(a) Except as provided in Subsection (1)(b) and Subsection 53A-17a-103(7), an LEA shall conduct school for at least 990 instructional hours over a minimum of 180 school days each school year.
(b) an LEA may seek an exception to the number of school days described in Subsection (1)(a):
(i) except as provided in Subsection (1)(b)(ii), for a

whole school or LEA as described in R277-121;

(ii) for a school closure due to snow, inclement weather, or other emergency as described in R277-419-12; or

(iii) for an individual student as described in Section R277-419-11.

(2)(a) An LEA may offer the required school days and hours described in Subsection (1)(a) at any time during the school year, consistent with the law.

(b) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(c) Each school day that satisfies the minimum hourly instruction time described in R277-419-2(31), shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

(3)(a) An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.

(b) If school is closed for any reason, the school shall make up the instructional time missed under the emergency or activity time as part of the minimum required time to qualify for full Minimum School Program funding.

(4) Minimum standards apply to all public schools in all settings unless Utah law or this rule provides for a specific exception.

(5) An LEA's governing board shall provide adequate contingency school days and hours in the LEA's yearly calendar to avoid the necessity of requesting a waiver except in the most extreme circumstances.

(6)(a) In addition to the allowance to use up to 32 instructional hours or four school days for professional learning described in Subsection 53A-17a-103(7), to provide planning and professional development time for staff, an LEA may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in this R277-419-4 and Subsection R277-419-2(32), are satisfied.

(b) A school may conduct parent-teacher and student Plan for College and Career Readiness conferences during the school day.

(c) Parent-teacher and college and career readiness conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.

(d) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(e) An LEA may designate no more than a total of 12 instructional days at the beginning of the school year, at the end of the school year, or both for the assessment of students entering or completing kindergarten.

(f) If instruction days are designated for kindergarten assessment:

(i) an LEA shall designate the days in an open meeting;

(ii) an LEA shall provide adequate notice and explanation to kindergarten parents well in advance of the assessment period;

(iii) qualified school employees shall conduct the assessment consistent with Section 53A-3-410; and

(iv) assessment time per student shall be adequate to justify the forfeited instruction time.

(g) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with an LEA, consistent with Utah law and Board administrative rules.

(h) Total instructional time and school calendars shall be approved by an LEA in an open meeting.

R277-419-5. Student Membership Eligibility and Continuing Enrollment Measurements.

(1) A student may enroll in two or more LEAs at the discretion of the LEAs.

(2) A kindergarten student may only enroll in one LEA at a time.

(3) In order to generate membership for funding through the Minimum School Program for any clock hour of instruction on any school day, an LEA shall ensure that a student being counted by the LEA in membership:

(a) has not previously earned a basic high school diploma or certificate of completion;

(b) has not been enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) does not have unexcused absences, which are determined using one of the continuing enrollment measurements described in Subsection (4);

(d) is a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) is of qualifying school age or is a retained senior;

(f)(i) is expected to attend a regular learning facility operated or recognized by an LEA on each regularly scheduled school day, if enrolled in a face-to-face learning program;

(ii) has direct instructional contact with a licensed educator provided by an LEA at:

(A) an LEA-sponsored center for tutorial assistance; or

(B) the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(I) injury;

(II) illness;

(III) surgery;

(IV) suspension;

(V) pregnancy;

(VI) pending court investigation or action; or

(VII) an LEA determination that home instruction is necessary;

(iii) is enrolled in an approved CTE course(s) on the campus of another state funded institution where such a course is:

(A) not offered at the student's school of membership;

(B) being used to meet Board-approved CTE graduation requirements under Subsection R277-700-6(14); and

(C) a course consistent with the student's SEOP/Plan for College and Career Readiness; or

(iv) is enrolled in a nontraditional program under the direction of an LEA that:

(A) is consistent with the student's SEOP/Plan for College and Career Readiness;

(B) has been approved by the student's counselor; and

(C) includes regular instruction or facilitation by a designated employee of an LEA.

(4) An LEA shall use one of the following continuing enrollment measures:

(a) For a student primarily enrolled in a face-to-face learning program, the LEA may not count a student as an eligible student if the eligible student has unexcused absences during all of the prior ten consecutive school days.

(b) For a student enrolled in a nontraditional program, an LEA shall:

(i) adopt a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for each student enrolled in the nontraditional program consistent with Subsection (3)(c);

(ii) document each student's continued enrollment status in compliance with the continuing enrollment policy at least once every ten consecutive school days; and

(iii) appropriately adjust and update student membership records in the student information system for

students that did not meet the continuing enrollment measurement, consistent with Subsection (3)(c).

(5) The continuing enrollment measurement described in Subsection (4)(b) may include some or all of the following components, in addition to other components, as determined by an LEA:

(a) a minimum student login or teacher contact requirement;

(b) required periodic contact with a licensed educator;

(c) a minimum hourly requirement, per day or week, when students are engaged in course work; or

(d) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

(6) For a student enrolled in both face-to-face and nontraditional programs, an LEA shall measure a student's continuing enrollment status using the methodology for the program in which the student earns the majority of their membership days.

(7)(a) An LEA desiring to generate membership for student enrollment in courses outlined in Subsection (3)(f)(iii), or to seek a waiver from a requirement(s) in Subsection (3)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.

(b) An LEA shall be notified within 30 days of the application deadline if courses have been approved.

R277-419-6. Student Membership Calculations.

(1)(a) Except as provided in Subsection (1)(b) or (1)(c), a student enrolled in only one LEA during a school year is eligible for no more than 180 days of regular membership per school year.

(b) An early graduation student may be counted for more than 180 days of regular membership in accordance with the student's early graduation student education plan.

(c) A student transferring within an LEA to or from a year-round school is eligible for no more than 205 days of regular membership per school year.

(2)(a) Except as provided in Subsection (2)(b), (2)(c), or (2)(d), a student enrolled in two or more LEAs during a school year is eligible for no more than 180 days of regular membership per school year.

(b) A student transferring to or from an LEA with a schedule approved under Subsection R277-419-4(1)(b) is eligible for no more than 220 days of regular membership per school year.

(c) A student transferring to or from an LEA where the student attended or will attend a year-round school is eligible for no more than 205 days of regular membership per school year.

(d) If the exceptions in Subsections (2)(b) and (2)(c) do not apply but a student transfers from one LEA to another at least one time during the school year, the student is eligible for regular membership in an amount not to exceed the sum of:

(i) 170 days; plus

(ii) 10 days multiplied by the number of LEAs the student attended during the school year.

(3) If a student is enrolled in two or more LEAs during a school year and the aggregate regular membership generated for the student between all LEAs exceeds the amount allowed under Subsection (2), the Superintendent shall apportion the days of regular membership allowed between the LEAs.

(4) If a student was enrolled for only part of the school day or only part of the school year, an LEA shall prorate the student's membership according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(5) For students in grades 2 through 12, an LEA shall calculate the days in membership using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(6) For students in grade 1, an LEA shall adjust the first term of the formula to use 810 hours as the denominator.

(7) For students in kindergarten, an LEA shall adjust the first term of the formula to use 450 hours as the denominator.

(8) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days.

(9) The sum of regular and resource special education membership days may not exceed 360 days.

(10) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

(11) An LEA may also count a student in membership for the equivalent in hours of up to:

(a) one period each school day, if the student has been:

(i) released by the school, upon a parent or guardian's request, during the school day for religious instruction or individual learning activity consistent with the student's SEOP/Plan for College and Career Readiness; or

(ii) participating in one or more extracurricular activities under Rule R277-438, but has otherwise been exempted from school attendance under Section 53A-11-102 for home schooling;

(b) two periods each school day per student for time spent in bus travel during the regular school day to and from another state-funded institution, if the student is enrolled in CTE instruction consistent with the student's SEOP/Plan for College and Career Readiness;

(c) all periods each school day, if the student is enrolled in:

(i) a concurrent enrollment program that satisfies all the criteria of Rule R277-713;

(ii) a private school without religious affiliation under a contract initiated by an LEA to provide special education services which directs that the instruction be paid by public funds if the contract with the private school is approved by an LEA board in an open meeting;

(iii) a foreign exchange student program under Subsection 53A-2-206(8); or

(iv) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP provided that:

(A) the student may only be counted in S1 membership and may not have an S2 record; and

(B) the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-7. Calculations for a First Year Charter School.

(1) For the first operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on October 1 counts.

(2) For the second operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on Section 53A-17a-

106.

R277-419-8. Reporting Requirements, LEA Records, and Audits.

(1) An LEA shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

(3) To determine student membership, an LEA shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

(e) disability status (resource or self-contained, if applicable); and

(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

(4) An LEA shall ensure that:

(a) computerized or manually produced records for CTE programs are kept by teacher, class, and classification of instructional program (CIP) code; and

(b) the records described in Subsection (4)(a) clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(5) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.

(6) Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(a) for the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year;

(b) for the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period; and

(c) schools shall continue instructional activities throughout required calendared instruction days.

(7) An LEA shall employ an independent auditor, under contract, to:

(a) annually audit student accounting records; and

(b) report the findings of the audit to:

(i) the LEA board; and

(ii) the Financial Operations Section of the Board.

(8) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the Superintendent in cooperation with the State Auditor's Office.

(9) The Superintendent:

(a) shall review each LEA's student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in Sections R277-484-7 and 8; and

(b) may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-9. High School Completion Status.

(1) An LEA shall account for the final status of all students who enter high school (grades 9-12) whether they graduate or leave high school for other reasons, using the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(a) graduates are students who earn a basic high school diploma by satisfying one of the options consistent with Subsection R277-705-4(2) or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733;

(b) completers are students who have not satisfied Utah's requirements for graduation but who:

(i) are in membership in twelfth grade on the last day of the school year; and

(ii)(A) meet any additional criteria established by an LEA consistent with its authority under Section R277-705-4;

(B) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, June 2016, and available at: http://www.schools.utah.gov/sars/Laws.aspx and the Utah State Board of Education;

(C) meet any criteria established for special education students under Subsection R277-700-8(5); or

(D) pass a General Educational Development (GED) test with a designated score;

(c) continuing students are students who:

(i) transfer to higher education, without first obtaining a diploma;

(ii) transfer to the Utah Center for Assistive Technology without first obtaining a diploma; or

(iii) age out of special education;

(d) dropouts are students who:

(i) leave school with no legitimate reason for departure or absence;

(ii) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of Subsection R277-419-5(3)(f)(ii);

(iii) are expelled and do not re-enroll in another public education institution; or

(iv) transfer to adult education;

(e) an LEA shall exclude a student from the cohort calculation if the student:

(i) transfers out of state, out of the country, to a private school, or to home schooling;

(ii) is a U.S. citizen who enrolls in another country as a foreign exchange student;

(iii) is a non-U.S. citizen who enrolls in a Utah public school as a foreign exchange student under Section 53A-2-206 in which case the student shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;

(iv) dies; or

(v) beginning with the 2015-2016 school year, is attending an LEA that is not the student's school of enrollment.

(2)(a) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.

(b) High School completion status or exit codes for each student are due to the Superintendent by year end upload for processing and auditing.

(c) Except as provided in Subsection (2)(d), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of a student's graduating cohort pursuant to Section R277-484-3.

(d) An LEA with an alternative school year schedule where all of the students have an extended break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's extended break, as defined in Section R277-484-3.

(3)(a) The Superintendent shall report a graduation rate for each school, LEA, and the state.

(b) The Superintendent shall calculate the graduation rates in accordance with applicable federal law.

(c) The Superintendent shall include a student in a school's graduation rate if:

(i) the school was the last school the student attended before the student's expected graduation date; and

(ii) the student does not meet any exclusion rules as stated in Subsection (1)(e).

(d) The last school a student attended will be determined by the student's exit dates as reported to the Data Clearinghouse.

(e) A student's graduation status will be attributed to the school attended in their final cohort year.

(f) If a student attended two or more schools during the student's final cohort year, a tie-breaking logic to select the single school will be used in the following hierarchical order of sequence:

(i) school with an attached graduation status for the final cohort year;

(ii) school with the latest exit date;

(iii) school with the earliest entry date;

(iv) school with the highest total membership;

(v) school of choice;

(vi) school with highest attendance; or

(vii) school with highest cumulative GPA.

(g) The Superintendent shall report the four-year cohort rate on the annual state reports.

R277-419-10. Student Identification and Tracking.

(1)(a) Pursuant to Section 53A-1-603.5, an LEA shall:

(i) use the SSID system maintained by the Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier; and

(ii) display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

(b) The unique student identifier:

(i) shall be assigned to a student upon enrollment into a public school program or a public school-funded program;

(ii) may not be the student's social security number or contain any personally identifiable information about the student.

(2) An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(a) A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the Superintendent.

(3) The Superintendent and LEAs shall track students and maintain data using students' legal names.

(4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student.

(5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in the LEA, and provide students and their parents with notification of enrollment in a public school.

(6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487.

R277-419-11. Exceptions.

(1)(a) An LEA may, at its discretion, make an exception for school attendance for a public school student, in the length of the school day or year, for a student with compelling circumstances.

(b) The time an excepted student is required to attend school shall be established by the student's IEP or Plan for College and Career Readiness.

(2) A school using a modified 45-day/15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if the school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

R277-419-12. Snow, Inclement Weather, or Other Emergency School Closure Days.

(1) An LEA may seek a waiver directly from the Superintendent from the 180 day requirement described in Subsection R277-419-4(1) if:

(a) the LEA closes a school for one school day due to excessive snow, inclement weather, or an other emergency; and

(b) the school closure will result in the LEA not meeting the 180 day requirement described in Section R277-419-4.

(2) The Superintendent may grant up to one waiver, per school year, per school, for the school to close due to excessive snow, inclement weather, or other emergency without Board approval if the LEA has provided adequate contingency school days and hours into the LEA's calendar to avoid the necessity of requesting a waiver as required in Subsection R277-419-4(5).

(3) If the Superintendent denies an LEA's request described in Subsection (1), the LEA may appeal the Superintendent's decision by making the request of the full Board.

(4) If an LEA seeks a waiver for two or more school days due to excessive snow, inclement weather, or other emergency, the LEA shall seek the waiver pursuant to the procedures described in R277-121.

(5)(a) An LEA may request the Board to waive the school day and hour requirement pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) A waiver described in this Subsection (5) may be for a designated time period, for a specific area, or for a specific LEA in the state, as determined by the health department directive.

(c) A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

(d) A waiver granted by the Board or Superintendent as described in this Subsection (5) shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(e) A waiver granted shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(f) The Board may encourage an LEA to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

KEY: education finance, school enrollment, pupil accounting
December 8, 2017 **Art X Sec 3**
Notice of Continuation August 14, 2017 **53A-1-401**
53A-17a-103(7)
53A-1-402(1)(e)
53A-1-404(2)
53A-1-301(3)(d)
53A-3-404

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

(1) This rule is authorized by:

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

(b) 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-13-301(4), which directs that the Board may make rules to establish standards for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records;

(d) Subsection 53A-8a-410(4), which directs that the Board may make rules to ensure the privacy and protection of individual evaluation data; and

(e) Section 53A-1-411, which directs the Board to establish procedures for administering or making available online surveys to obtain information about public education issues.

(2) The purpose of this rule is to:

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

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

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

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

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

R277-487-2. Definitions.

(1) "Association" has the same meaning as that term is defined in Subsection 53A-1-1601(3).

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

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

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

(i) FERPA; and

(ii) the Utah Student Data Protection Act, Title 53A, Chapter 1, Part 14.

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

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

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

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

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

(6) "Data governance plan" has the same meaning as defined in Subsection 53A-1-1402(9).

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

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

(9) "Enrollment verification data" includes:

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

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

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English language learner plan.

(10) "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

(11) "Information Technology Systems Security Plan" means a plan incorporating policies and process for:

(a) system administration;

(b) network security;

(c) application security;

(d) endpoint, server, and device security;

(e) identity, authentication, and access management;

(f) data protection and cryptography;

(g) monitoring, vulnerability, and patch management;

(h) high availability, disaster recovery, and physical protection;

(i) incident responses;

(j) acquisition and asset management; and

(k) policy, audit, and e-discovery training.

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

(13) "Metadata dictionary" has the same meaning as defined in Subsection 53A-1-1402(16).

(14) "Personally identifiable student data" has the same meaning as defined in Subsection 53A-1-1402(20).

(15) "Student data advisory groups" has the same meaning as described in Subsection 53A-1-1403(3).

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

(a) is designated as the student data manager by an LEA under Section 53A-1-1404;

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

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

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

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

(17)(a) "Student information" means materials, information, records and knowledge that an LEA possesses or maintains about individual students.

(b) Student information is broader than student records and personally identifiable student information and may include information or knowledge that school employees possess or learn in the course of their duties.

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

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

(b) course-taking and completion;

(c) grade-point average;

(d) remediation;
(e) retention;
(f) degree, diploma, or credential attainment; and
(g) enrollment and demographic data.
(19) "Third party contractor" has the same meaning as defined in Subsection 53A-1-1402(26).

R277-487-3. Data Privacy and Security Policies.
(1) The Superintendent shall develop resource materials for LEAs to train employees, aides, and volunteers of an LEA regarding confidentiality of personally identifiable student information and student performance data.
(2) The Superintendent shall make the materials developed in accordance with Subsection (1) available to each LEA.
(3) An LEA or public school may not be a member of or pay dues to an association that is not in compliance with:
(a) FERPA;
(b) Title 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) this R277-487.
(4) An LEA shall comply with Title 53A, Chapter 1, Part 14, Student Data Protection Act.
(5) An LEA shall comply with Section 53A-13-303.
(6) An LEA is responsible for the collection, maintenance, and transmission of student data.
(7) An LEA shall ensure that school enrollment verification data, student performance data, and personally identifiable student information are collected, maintained, and transmitted:
(a) in a secure manner; and
(b) consistent with sound data collection and storage procedures, established by the LEA.
(8) An LEA may contract with a third party provider to collect, maintain, and have access to school enrollment verification data or other student data if:
(a) the third party contractor meets the definition of a school official under 34 CFR 99.31 (a)(1)(i)(B);
(b) the contract between the LEA and the third party contractor includes a provision that the data is the property of the student under Section 53A-1-1405; and
(c) the LEA monitors and maintains control of the data.
(9) If an LEA contracts with a third party contractor to collect and have access to the LEA's data as described in Subsection (6), the LEA shall notify a student and the student's parent or guardian in writing that the student's data is collected and maintained by the third party contractor.
(10) An LEA shall publicly post the LEA's definition of directory information and describe how a student data manager may share personally identifiable information that is directory information.
(11) By July 1 annually, an LEA shall enter all student data elements shared with third parties into the Board's metadata dictionary.
(12) An LEA shall report all unauthorized disclosures of student data by third parties to the Superintendent.
(13) An LEA shall provide the Superintendent with a copy or link to the LEA's data governance plan by October 1 annually.
(14) An LEA shall provide the Superintendent with a copy or link to the LEA's Information Technology Systems Security Plan by October 1 annually.
(15) All public education employees, aides, and volunteers in public schools shall become familiar with federal, state, and local laws regarding the confidentiality of student performance data and personally identifiable student information.
(16) All public education employees, aides, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, local laws, and LEA policies created in accordance with this section, with regard to student performance data and personally identifiable student information.
(17) An employee, aide, or volunteer may not share, disclose, or disseminate passwords for electronic maintenance of:
(a) student performance data; or
(b) personally identifiable student information.
(18) A public education employee licensed under Section 53A-6-104 may only access or use student information and records if the public education employee accesses the student information or records consistent with the educator's obligations under R277-515.
(19) The Board may discipline a licensed educator in accordance with licensing discipline procedures if the educator violates this R277-487.
(20) An LEA shall annually provide a training regarding the confidentiality of student data to any employee with access to education records as defined in FERPA.
(21) A school employee shall annually submit a certified statement to the LEA's student data manager, which certifies that the school employee completed the LEA's required student privacy training and understands student privacy requirements.

R277-487-4. Transparency.
(1) The Superintendent shall recommend policies for Board approval and model policies for LEAs regarding student data systems.
(2) A policy prepared in accordance with Subsection (1) shall include provisions regarding:
(a) accessibility by parents, students, and the public to student performance data;
(b) authorized purposes, uses, and disclosures of data maintained by the Superintendent or an LEA;
(c) the rights of parents and students regarding their personally identifiable information under state and federal law;
(d) parent, student, and public access to information about student data privacy and the security safeguards that protect the data from unauthorized access and use; and
(e) contact information for parents and students to request student and public school information from an LEA consistent with the law.

R277-487-5. Responsibilities of Chief Privacy Officer.
(1) The Chief Privacy Officer:
(a) may recommend legislation, as approved by the Board, for additional data security protections and the regulation of use of the data;
(b) shall supervise regular privacy and security compliance audits, following initiation by the Board;
(c) shall have responsibility for identification of threats to data security protections;
(d) shall develop and recommend policies to the Board and model policies for LEAs for:
(i) protection of personally identifiable student information;
(ii) consistent wiping or destruction of devices when devices are discarded by public education entities; and
(iii) appropriate responses to suspected or known breaches of data security protections;
(e) shall conduct training for Board staff and LEAs on student privacy; and
(f) shall develop and maintain a metadata dictionary as required by Section 53A-1-1403.

R277-487-6. Prohibition of Public Education Data Use for Marketing.

Data maintained by the state, a school district, school, or other public education agency or institution in the state, including data provided by contractors, may not be sold or used for marketing purposes, or targeted advertising as defined in Subsection 53A-1-1402(26) except with regard to authorized uses of directory information not obtained through a contract with an educational agency or institution.

R277-487-7. Public Education Research Data.

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

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

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

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

(5) The Superintendent:

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

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

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

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

(7) Requests for data that disclose student information may only be provided in accordance with Section 53A-1-1409 and FERPA, incorporated herein by reference, and may include:

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

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

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

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

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

(10) Request for records under Title 63G, Chapter 2, Government Records Access and Management Act, are not subject to this Section R277-487-7.

R277-487-8. Public Education Survey Data.

(1) The Superintendent shall approve statewide education surveys administered with public funds through the Board or through a contract approved by the Board, as required under Section 53A-1-411.

(2) Data obtained from a statewide survey administered with public funds under Subsection (1) to the extent not subject to Section 53A-1-1405 are the property of the Board.

(3) The Superintendent shall make data obtained from a survey developed in accordance with Subsection (1) available only if the data is shared in such a manner as to protect the privacy of students and educators in accordance with federal and state law.

R277-487-9. CACTUS Data.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) CACTUS information belongs solely to the Board.

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

R277-487-10. Educator Evaluation Data.

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

(b) School administrators shall share information requested by parents while ensuring the privacy of individual student information and educator evaluation data.

(2) Individual educator evaluation data shall be protected at the school, LEA and state levels and, if applicable, by the Board.

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

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

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

R277-487-11. Application to Third Party Contractors.

(1) The Board and LEAs shall set policies that govern a third party contractor's access to personally identifiable student data and public school enrollment verification data consistent with Section 53A-1-1401 et seq.

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

(a) the release is allowed by, and released in accordance with, Section 53A-1-1409 and FERPA, incorporated herein by reference, and its implementing regulations; and

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

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

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

R277-487-12. Annual Reports by Chief Privacy Officer.

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

(2) The public report shall include:

(a) information about the implementation of this rule;

(b) information about research studies begun or planned using student information and data;

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

(d) a summary of data system audits; and

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

R277-487-13. Data Security and Privacy Training for Educators.

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

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

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

KEY: students, records, confidentiality

July 10, 2017	**Art X Sec 3**
Notice of Continuation November 14, 2014	**53A-13-301(4)**
	53A-1-401
	53A-1-411
	53A-8a-410(4)

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

(1) This rule is authorized by:

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

(b) 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-6-104, which gives the Board power to issue licenses.

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

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

R277-502-2. Definitions.

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

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

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

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

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

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

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

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

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

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

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

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

(i) Early Childhood (k-3);

(ii) Elementary (k-6);

(iii) Elementary (1-8);

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

(v) Secondary (6-12);

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

(vii) Career and Technical Education;

(viii) School Counselor;

(ix) School Psychologist;

(x) School Social Worker;

(xi) Special Education (k-12);

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

(xiii) Communication Disorders;

(xiv) Speech-Language Pathologist; and

(xv) Speech-Language Technician.

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

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

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

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

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

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

R277-502-3. Program Approval and Requirements.

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

(a) Rule R277-504;

(b) Rule R277-505; or

(c) Rule R277-506.

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

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

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

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

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

(b) include coursework designed to ensure that the educator is able to meet the Utah Effective Educator Standards established in R277-530;

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

(d) establish entry requirements designed to ensure that only high quality individuals enter the licensure program, including the following minimum components:

(i) a minimum high school or college GPA of 3.0;

(ii) a Board-cleared fingerprint background check; and at least one of the following:

(iii)(A) a passing score on a Board-approved basic skills test;

(B) an ACT composite score of 21 with a verbal/English score no less than 20 and a mathematics/quantitative score of no less than 19; or

(C) a combined SAT score of 1000 with neither mathematics nor verbal below 450; and

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

(4) An institution may waive any of the entrance requirements provided in Subsection (3)(d) based on program established guidelines for no more than 10 percent of an entrance cohort.

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

(6) The Superintendent shall be responsible for:

(a) observing and monitoring the approval review process;

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

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

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

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

(a) a program summary;

(b) approval review findings;

(c) program areas of distinction;

(d) program enrollment; and

(e) program goals and direction.

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

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

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

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

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

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

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

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

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

(d) information about program timelines and anticipated enrollment.

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

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

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

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

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

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

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

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

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

(e) a summary explanation of students admitted under the waiver identified in Subsection (4) and an explanation of the waiver.

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

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

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

(b) The preparation program officials shall determine whether any content or pedagogy coursework previously completed meets current program standards and if additional coursework, hours or other activities are necessary to recommend licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

license; and

(b) the recommendation of the employing LEA.

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

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

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

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

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

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

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

(a) has current National Board Certification;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R277-502-6. Returning Educator Relicensure.

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

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

(b) Employment by an LEA;

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

(i) previous successful public school teaching experience;

(ii) formal educational preparation;

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

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

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

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

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

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

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

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

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

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

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

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

R277-502-7. Professional Educator License Reciprocity.

(1) The Superintendent shall act in accordance with the requirements of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201, et seq.

(2) A Level 1 license may be issued to an individual holding a professional educator license in another state who has completed preparation equivalent to Board-approved standards and who has completed Board-approved testing, as required by Subsection R277-503-3(4).

(3) If an out-of-state applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(4) If an out-of-state applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of Rule R277-522.

KEY: professional competency, educator licensing
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53A-1-401

R277. Education, Administration.
R277-515. Utah Educator Professional Standards.
R277-515-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices; 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) establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents;

(b) recognize that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities; and

(c) distinguish behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-2. Definitions.

(1)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.

(b) A "boundary violation" may include the following, depending on the circumstances:

(i) isolated, one-on-one interactions with students out of the line of sight of others;

(ii) meeting with students in rooms with covered or blocked windows;

(iii) telling risqué jokes to, or in the presence of a student;

(iv) employing favoritism to a student;

(v) giving gifts to individual students;

(vi) educator initiated frontal hugging or other uninvited touching;

(vii) photographing individual students for a non-educational purpose or use;

(viii) engaging in inappropriate or unprofessional contact outside of educational program activities;

(ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;

(x) interacting privately with a student through social media, computer, or handheld devices; and

(xi) discussing an educator's personal life or personal issues with a student.

(c) A "boundary violation" does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by an IEP or 504 plan.

(2) "Core Standard" means a statement:

(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and

(b) established by the Board in Rule R277-700 as required by Section 53A-1-402.

(3) "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

(4)(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

(b) "Professional educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.

(5) "Illegal drug" means a substance included in:

(a) Schedules I, II, III, IV, or V established in Section 58-37-4;

(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or

(c) any controlled substance analog.

(6) "Grooming" means befriending and establishing an emotional connection with a child or a child's family to lower the child's inhibitions for emotional, physical, or sexual abuse.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8) "License applicant" means a person who is applying for:

(a) an initial license; or

(b) renewal of a license.

(9) "Licensing discipline" means a sanction, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure, for violation of a professional educator standard.

(10) "Misdemeanor offense," for purposes of this rule, does not include Class C or lower violations of Title 41, Utah Motor Vehicle Code

(11) "Plea in abeyance" means a plea of guilty or no contest that is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

(12) "School-related activity" means any event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization, or both.

(13) "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

(14) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established by Section 53A-6-301.

(15) "Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

(1) The professional educator is responsible for compliance with federal, state, and local laws.

(2) The professional educator shall familiarize himself or herself with professional ethics and is responsible for

compliance with applicable professional standards.

(3) Failing to strictly adhere to Subsection (4) shall result in licensing discipline.

(4) The professional educator, upon receiving a Utah educator license:

(a) may not be convicted of any felony or misdemeanor offense that adversely affects the individual's ability to perform an assigned duty and carry out the responsibilities of the profession, including role model responsibility;

(b) may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(c) may not commit any act of cruelty to a child or any criminal offense involving a child;

(d) may not be convicted of a stalking crime;

(e) may not possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed for the individual;

(f) may not engage in conduct of a sexual nature described in Section 53A-6-405;

(g) may not be subject to a diversion agreement specific to a sex-related or drug-related offense, plea in abeyance, court-imposed probation, or court supervision related to a criminal charge that could adversely impact the educator's ability to perform the duties and responsibilities of the profession;

(h) may not provide to a student or allow a student under the educator's supervision or control to consume an alcoholic beverage or unauthorized drug;

(i) may not attend school or a school-related activity in an assigned supervisory capacity while possessing, using, or under the influence of alcohol or an illegal drug;

(j) may not intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity;

(k) shall cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(l) shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with rules and LEA policy regarding the reporting of suspected child abuse;

(m) shall strictly adhere to state laws regarding the possession of a firearm while on school property or at a school-sponsored activity and enforce an LEA policy related to student access to or possession of a weapon;

(n) may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;

(o) may not engage in grooming of a student or minor;

(p) may not:

(i) participate in sexual, physical, or emotional harassment towards any public school-age student or colleague; or

(ii) knowingly allow harassment toward a student or colleague;

(q) may not make inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, or colleague, regardless of age or location;

(r) may not interfere or discourage a student's or colleague's legitimate exercise of political and civil rights, acting consistent with law and LEA policy;

(s) shall provide accurate and complete information in a required evaluation of himself or herself, another educator, or student, as directed, consistent with the law;

(t) shall be forthcoming with accurate and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, including a role model responsibility, by himself or herself, or another;

(u) shall provide accurate and complete information required for licensure, transfer, or employment purposes;

(v) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure;

(w) shall notify the Superintendent at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction;

(x) shall notify the Superintendent honestly and completely of past criminal convictions at the time of the license application and renewal of licenses; and

(y) shall provide complete and accurate information during an official inquiry or investigation by LEA, state, or law enforcement personnel.

(5) An LEA shall report violations described in Subsection (4) to UPPAC.

(6)(a) Failure to adhere to this Subsection (6) may result in licensing discipline.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) An educator may not:

(i) exclude a student from participating in any program or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief, physical or mental condition, family, social, or cultural background, or sexual orientation; and

(ii) may not engage in conduct that would encourage a student to develop a prejudice on the grounds described in Subsection (6)(c)(i) or any other, consistent with the law.

(d) An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose, consistent with:

(i) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(ii) the Federal Family Educational Rights and Privacy Acts, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.

(e) Consistent with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and rule, a professional educator:

(i) may not accept a bonus or incentive from a vendor or potential vendor or a gift from a parent of a student, or a student where there may be the appearance of a conflict of interest or impropriety;

(ii) may not accept or give a gift to a student that would suggest or further an inappropriate relationship;

(iii) may not accept or give a gift to a colleague that is inappropriate or furthers the appearance of impropriety;

(iv) may accept a donation from a student, parent, or business donating specifically and strictly to benefit a student;

(v) may accept, but not solicit, a nominal appropriate personal gift for a birthday, holiday, or teacher appreciation occasion, consistent with LEA policy and Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(vi) may not use the educator's position or influence to:

(A) solicit a colleague, student, or parent of a student to purchase equipment, supplies, or services from the educator or participate in an activity that financially benefits the educator unless approved in writing by the LEA; or

(B) promote an athletic camp, summer league, travel opportunity, or other outside instructional opportunity from which the educator receives personal remuneration and that involve students in the educator's school system, unless approved in writing consistent with LEA policy and rule; and

(vii) may not use school property, a facility, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

(1) A professional educator maintains a positive and safe learning environment for a student and works toward meeting an educational standard required by law.

(2)(a) Failure to strictly adhere to this Subsection (2) shall result in licensing discipline.

(b) The professional educator, upon receiving a Utah educator license:

(i) shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(ii) shall resolve a disciplinary problem according to law, LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(iii) shall supervise a student appropriately at school and a school-related activity, home or away, consistent with LEA policy and building procedures and the age of the students;

(iv) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;

(v)(A) shall demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53A-1-608 and Rule R277-404;

(B) shall cooperate in good faith with a required student assessment;

(C) shall submit and include all required student information and assessments, as required by statute and rule; and

(D) shall attend training and cooperate with assessment training and assessment directives at all levels;

(vi) may not use or attempt to use an LEA computer or information system in violation of the LEA's acceptable use policy for an employee or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility; and

(vii) may not knowingly possess, while at school or any school-related activity, any pornographic material in any form.

(3) An LEA shall report violations of Subsection (2) to UPPAC.

(4)(a) Failure to adhere to this Subsection (4) may result in licensing discipline.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) A professional educator:

(i) shall demonstrate respect for a diverse perspective, idea, and opinion and encourage contributions from a broad spectrum of school and community sources, including a community whose heritage language is not English;

(ii) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;

(iii) shall maintain a positive and safe learning environment for a student;

(iv) shall make appropriate use of technology by:

(A) involving students in social media responsibly, transparently, and primarily for purposes of teaching and learning per school and district policy;

(B) maintaining separate professional and personal virtual profiles;

(C) respecting student privacy on social media; and

(D) taking appropriate and reasonable measures to maintain confidentiality of student information and education records stored or transmitted through the use of electronic or computer technology;

(v) shall work toward meeting an educational standard required by law;

(vi) shall teach the objectives contained in a Core Standard;

(vii) may not distort or alter subject matter from a Core Standard in a manner inconsistent with the law;

(viii) shall use instructional time effectively consistent with LEA policy; and

(ix) shall encourage a student's best effort in an assessment.

R277-515-5. Professional Educator Responsibility for Compliance with LEA Policy.

(1)(a) Failure to strictly adhere to this Subsection (1) shall result in licensing discipline.

(b) A professional educator:

(i) understands, respects, and does not violate appropriate boundaries:

(A) established by ethical rules and school policy and directive in teaching, supervising, and interacting with a student or colleague; and

(B) described in Subsection R277-515-2(1); and

(ii) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy.

(2) An LEA shall report violations of Subsection (1) to UPPAC.

(3)(a) Failure to adhere to this Subsection (3) may result in licensing discipline.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) understands and follows a rule and LEA policy;

(ii) understands and follows a school or administrative policy or procedure;

(iii) resolves a grievance with a student, colleague, school community member, and parent professionally, with civility, and in accordance with LEA policy; and

(iv) follows LEA policy for collecting money from a student, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

(1) A professional educator exhibits integrity and honesty in relationships with an LEA administrator or personnel.

(2)(a) Failure to adhere to this Subsection (2) may result in licensing discipline.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) shall communicate professionally and with civility with a colleague, school and community specialist, administrator, and other personnel;

(ii) shall maintain a professional and appropriate relationship and demeanor with a student, colleague, school community member, and parent;

(iii) may not promote a personal opinion, personal issue, or political position as part of the instructional process in a manner inconsistent with law;

(iv) shall express a personal opinion professionally and responsibly in the community served by the school;

(v) shall comply with an LEA policy, supervisory directive, and generally-accepted professional standard regarding appropriate dress and grooming at school and at a school-related event;

(vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;

(vii) shall honor all contracts for a professional service;

(viii) shall perform all services required or directed by the educator's contract with the LEA with professionalism consistent with LEA policy and rule; and

(ix) shall recruit another educator for employment in another position only within a LEA timeline and guideline.

R277-515-7. Violations of Professional Ethics.

(1) This rule establishes standards of ethical decorum and behavior for licensed educators in the state.

(2) Beginning in the 2018-19 school year, to obtain a license or renew a license issued by the Board, a license applicant shall review this rule and execute a form as part of the licensure or renewal process verifying that the educator:

(a) has read R277-515 and R277-516; and

(b) understands that the educator's conduct is governed by R277-515 and R277-516.

(3) An LEA shall:

(a) annually train educators employed by the LEA on the Utah Educator Professional Standards described in Rules R277-515 and R277-516; and

(b) provide written assurance of the training described in Subsection (3)(a) in accordance with R277-108.

(4) Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator.

(5) The Board and Superintendent shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator.

(6) Reporting and employment provisions related to professional ethics are provided in:

(a) Section 53A-15-1507;

(b) Section 53A-6-501;

(c) Section 53A-11-403; and

(d) Section R277-516-7.

KEY: educators, professional, standards

September 21, 2017 **Art X Sec 3**

Notice of Continuation November 6, 2017 **53A-1-402(1)(a)**

53A-6

53A-1-401

R277. Education, Administration.
R277-705. Secondary School Completion and Diplomas.
R277-705-1. 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) Subsections 53A-1-402(1)(b) and (c), which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; and

(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to:

(a) provide consistent definitions;

(b) provide alternative methods for a student to earn credit and alternate methods for schools to award credit; and

(c) provide rules and procedures for the assessment of all students as required by law.

R277-705-2. Definitions.

(1) "Demonstrated competence" means subject mastery as determined by LEA standards and review. LEA review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

(2) "Diploma" means an official document awarded by an LEA consistent with state and LEA graduation requirements and the provisions of this rule.

(3)(a) "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.

(b) Grade 6 may be considered a secondary grade for some purposes.

(4) "Section 504 plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

(5)(a) "Special purpose school" means a school designated by a regional accrediting agency, adopted by the Board.

(b) "Special purpose school" includes a school:

(i) that serves a specific population such as a student with a disability, youth in custody, or a school with a specific curricular emphasis; and

(ii) with curricula designed to serve specific populations that may be modified from a traditional program.

(6) "Supplemental education provider" means a private school or educational service provider:

(a) that may or may not be accredited; and

(b) that provides courses or services similar to public school courses or classes.

(7)(a) "Transcript" means an official document or record generated by one or several schools which includes:

(i) the courses in which a secondary student was enrolled;

(ii) grades and units of credit earned; and

(iii) citizenship and attendance records.

(b) A transcript is one part of a student's permanent record or cumulative file that may include:

(i) birth certificate

(ii) immunization records; and

(iii) other information as determined by the school in possession of the record.

(8) "Unit of credit" means credit awarded for a course taken:

(a) consistent with this rule;

(b) upon LEA authorization; or

(c) for mastery demonstrated by approved methods.

R277-705-3. Required LEA Policy Explaining Student Credit.

(1)(a) An LEA governing board shall establish a policy, in an open meeting, explaining the process and standards for acceptance and reciprocity of credits earned by a student in accordance with state law.

(b) An LEA policy described in Subsection (1)(a) shall include specific and adequate notice to a student and a parent of all policy requirements and limitations.

(2)(a) An LEA shall accept credits and grades awarded to a student from a school or a provider accredited by an accrediting entity adopted by the Board.

(b) An LEA policy may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.

(3) An LEA policy shall provide various methods for a student to earn credit from a non-accredited source, course work, or education provider including:

(a) satisfaction of coursework by demonstrated competency, as evaluated at the LEA level;

(b) assessment as proctored and determined at the school or school level;

(c) review of student work or projects by an LEA administrator; and

(d) satisfaction of electronic or correspondence coursework, as approved at the LEA level.

(4) An LEA may require documentation of compliance with Section 53A-11-102 prior to reviewing a student's home school or competency work, assessment or materials.

(5) An LEA policy for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

(6) An LEA has the final decision-making authority for the awarding of credit and grades from a non-accredited source consistent with state law, due process, and this rule.

R277-705-4. Diplomas and Certificates of Completion.

(1) An LEA shall award diplomas and certificates of completion.

(2) An LEA shall establish criteria for a student to earn a certificate of completion that may be awarded to a student who:

(a) has completed the student's senior year;

(b) is exiting the school system; and

(c) has not met all state or LEA requirements for a diploma.

R277-705-5. Students with Disabilities.

(1) A student with a disability served by a special education program shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

(2) An LEA may award a student a certificate of completion consistent with state and federal law and the student's IEP or Section 504 Plan.

R277-705-6. Adult Education Students.

(1) An adult education student is eligible only for an adult education secondary diploma.

(2) An adult education diploma may not be upgraded or changed to a traditional, high school-specific diploma.

(3) A school district shall establish a policy:

(a) allowing or disallowing adult education student participation in graduation activities or ceremonies; and

(b) establishing timelines and criteria for satisfying adult education graduation and diploma requirements.

R277-705-7. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.

(1) An LEA shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the LEA.

(2) An LEA may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.

(3) A diploma, a certificate, credits, or an unofficial transcript may not be withheld from a student for nonpayment of school fees.

(4)(a) An LEA shall establish a consistent timeline for all students for completion of graduation requirements.

(b) A timeline described in Subsection (4)(a) shall be consistent with state law and this rule.

(5) An LEA's graduation requirements may not apply retroactively.

KEY: adult education, high school credit, graduation requirements
January 7, 2016 Art X Sec 3
Notice of Continuation December 15, 2017 53A-1-402(1)(b)
53A-1-401(3)

R277. Education, Administration.
R277-707. Enhancement for Accelerated Students Program.
R277-707-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-17a-165, which allows the Board to adopt rules for the expenditure of funds appropriated for Enhancement for Accelerated Students Program; 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)(a) The purpose of this rule is to specify the procedures for distributing funds appropriated under Section 53A-17a-165 to LEAs.

(b) The intent of this appropriation is to enhance the academic growth of students whose academic achievement is accelerated.

R277-707-2. Definitions.

(1) "Accelerated students" means children and youth whose superior academic performance or potential for accomplishment requires a differentiated and challenging instructional model.

(2) "Advanced placement" or "AP" courses means rigorous courses developed by the College Board where:

(a) each course is developed by a committee composed of college faculty and AP teachers, and covers the breadth of information, skills, and assignments found in the corresponding college course; and

(b) students who perform well on the AP exam may be:

(i) granted credit; or

(ii) advanced standing at participating colleges or universities.

(3) "Gifted and talented programs" means programs to:

(a) assist individual students to develop their high potential and enhance their academic growth; and

(b) identify students with outstanding abilities who are capable of high performance in the following areas:

(i) general intellectual ability;

(ii) specific academic aptitude; and

(iii) creative or productive thinking.

(4) "International Baccalaureate" or "(IB)" Program means one of the following programs established by the International Baccalaureate Organization:

(a) the Diploma Program;

(b) the Middle Years Program; or

(c) the Primary Years Program.

(5) "Weighted Pupil Unit" means the basic state funding unit.

(6) "Utah Consolidated Application" or "UCA" means the web-based grants management tool employed by the Board through which LEAs submit plans and budgets for approval by the Superintendent.

R277-707-3. Eligibility, Application, Distribution and Use of Funds.

(1) All LEAs are eligible to apply for the Enhancement for Accelerated Students Program funds using the UCA.

(2)(a) An LEA shall have a process for identifying students whose academic achievement is accelerated based upon multiple assessment instruments.

(b) These instruments shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse students and students with disabilities.

(3) The distribution formula includes an allocation of money for:

(a) Advanced Placement courses:

(i) The designated funds for the advanced placement program equal 0.38 multiplied by the difference between the funds appropriated for the Enhancement for Accelerated Students Program less the allotment under Subsection 53A-17a-165(3).

(ii)(A) The total funds designated for the advanced placement program are divided by the total number of Advanced Placement exams passed with a grade of 3 or higher by students.

(B) This calculation results in a fixed amount per exam passed with each participating LEA receiving that amount for each exam successfully passed by one of its students.

(b) Gifted and Talented programs:

(i) The designated funds for the Gifted and Talented Program equal 0.62 multiplied by the difference between the funds appropriated for the Enhancement for Accelerated Students Program less the allotment under Subsection 53A-17a-165(3).

(ii) Each LEA shall receive its share of funds in the proportion that the LEA's number of weighted pupil units for kindergarten through grade twelve bears to the state total.

(iii) An LEA shall expend Gifted and Talented program funds in accordance with the UCA guidelines.

(c) IB: LEAs shall have an IB authorized program to qualify for funds.

(i) Fifty percent of the total funds designated for IB consistent with Subsection 53A-17a-165(3) shall be equally distributed among all authorized IB programs in the state.

(ii) The remaining fifty percent of allocation shall be distributed to LEAs with Diploma Programs where students scored a grade of 4 or higher on IB exams, resulting in a fixed amount of dollars per exam passed.

R277-707-4. Performance Criteria and Reports.

(1) An LEA receiving funds, as set forth in Section R277-707-3, shall be required to submit an annual evaluation report to the Superintendent consistent with Section 53A-17a-165. The report shall include the following performance criteria related to the identified students whose academic achievement is accelerated:

(a) number of identified students disaggregated by subgroups;

(b) graduation rates for identified students;

(c) number of AP classes taken, completed, and exams passed with a score of 3 or above by identified students;

(d) number of IB classes taken, completed, and exams passed with a score of 4 or above by identified students;

(e) number of Concurrent Enrollment classes taken and credit earned by identified students;

(f) ACT or SAT data, including the number of students participating, at or above the college readiness standards;

(g) gains in proficiency in language arts; and

(h) gains in proficiency in mathematics.

(2) The Superintendent shall submit an annual report on program effectiveness to the Public Education Appropriations Subcommittee of the Utah State Legislature consistent with Subsection 53A-17a-165(6).

KEY: accelerated learning, enhancement programs
July 11, 2016 **Art X Sec 3**
Notice of Continuation May 16, 2016 **53A-17a-165**
53A-17a-165(5)
53A-1-401

R277. Education, Administration.
R277-750. Education Programs for Students with Disabilities.
R277-750-1. 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), which directs the Board to adopt rules regarding services for persons with disabilities;

(c) Title 53A, Chapter 15, Part 3, Education of Children with Disabilities, which requires the Board to adopt rules regarding educational services to students with disabilities; 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 specify standards and procedures for special education programs.

R277-750-2. Incorporation of Special Education Rules Manual by Reference.

(1) This rule incorporates by reference the Special Education Rules manual dated October 2016, which establishes policies and procedures for:

(a) appropriate and timely identification of a student with a disability;

(b) evaluation and classification of a student with a disability by qualified personnel;

(c) standards for services provided to a student with a disability;

(d) provision for multi-district programs for a student with a disability;

(e) provision for delivery of service responsibilities;

(f) certification and qualifications for instructional staff; and

(g) the state's implementation of federal special education programs, including IDEA.

(2) A copy of the manual is located at:

(a) https://www.schools.utah.gov/specialeducation/resources/laws rulesregulations; and

(b) the Utah State Board of Education.

R277-750-3. Standards and Procedures.

(1) The Board adopts and hereby incorporates by reference the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C., 1400 as the Board's rules for students with disabilities.

(2) The Superintendent and LEAs shall provide services to a student with a disability in accordance with:

(a) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;

(b) this rule;

(c) the Special Education Rules, August 2016, included in the Special Education Rules manual described in R277-750-2; and

(d) the annual Utah State Federal Application under Part B of the Individuals with Disabilities Education Act as amended in 2004.

KEY: special education

October 11, 2016	**Art X Sec 3**
Notice of Continuation August 15, 2016	**Title 15, Part 3**
	53A-1-402(1)
	53A-1-401

R277. Education, Administration.
R277-753. LEA Reporting Requirements for Section 504 Students.
R277-753-1. 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-17a-112.2(2)(a), which directs the Board to make rules for implementation of a reimbursement program for special education funds to address Section 504 accommodations.

(2) The purpose of this rule is to establish reporting requirements for LEAs providing Section 504 accommodations to students.

R277-753-2. Definitions.

(1) "Autism" means a disability of verbal, non-verbal or social interaction that substantially limits one or more major life activities and does not require specialized instruction under special education services.

(2) "Brain injury impairment" or "Concussion impairment" means a short term disability of the brain caused by an external physical force that substantially limits one or more major life activities, and which adversely affects a student's access to the student's education.

(3) "Hearing impairment" means a hearing disability that substantially limits one or more major life activity, which may require assistive technology but does not require specialized instruction under special education services.

(4) "Learning impairment" means a learning disability, which includes, but is not limited to, dyslexia, dysgraphia, and dyscalculia, that substantially limits one or more major life activities, but does not require specialized instruction under special education services.

(5) "Major bodily function impairment" means an impairment to any of the following functions that adversely limit a student's access to the student's education:

(a) immune system function;
(b) normal cell growth;
(c) genitourinary function;
(d) bladder function;
(e) brain function;
(f) circulatory function;
(g) endocrine function;
(h) lymphatic function;
(i) special sensory organ and skin function;
(j) digestive function;
(k) bowel function;
(l) neurological function;
(m) respiratory function;
(n) cardiovascular function;
(o) hemic function;
(p) musculoskeletal function; and
(q) reproductive function.

(6) "Medical impairment" means a disability that is chronic or acute in nature, which may be active or in remission, and which substantially limits one or more major life activities, including, but not limited to:

(a) allergies;
(b) asthma;
(c) attention deficit disorder or attention deficit hyperactivity disorder;
(d) chemical sensitivities;
(e) diabetes;
(f) epilepsy;
(g) a heart condition;
(h) hemophilia;
(i) lead poisoning;
(j) leukemia;
(k) cancer;
(l) arthritis;
(m) nephritis;
(n) rheumatic fever;
(o) sickle cell anemia;
(p) Tourette syndrome;
(q) HIV/AIDS; or
(r) an acquired brain injury adversely affecting a student's access to the student's education, which may result from health problems such as:
(i) an hypoxic event;
(ii) encephalitis;
(iii) meningitis;
(iv) brain tumor; or
(v) stroke.

(7) "Mental health impairment" means a mental disability that is chronic or acute in nature, and which substantially limits one or more major life activities, including, but not limited to:

(a) anxiety;
(b) attention deficit disorder or attention deficit hyperactivity disorder;
(c) depression;
(d) post-traumatic stress disorder; or
(e) emotional or mental illnesses.

(8) "Orthopedic impairment" means a physical disability, which may be on-going or short term in nature, that substantially limits one or more major life activities, and which adversely affects a student's access to the student's education.

(9) "Other impairment" means any other disability not specifically defined in this rule, which substantially limits one or more major life activities.

(10) "Section 504" means section 504 of the Vocational Rehabilitation Act of 1973, 29 U.S.C. 701, et seq., which guarantees certain rights to disabled students.

(11) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board.

(12) "Utah Program Improvement Planning System" or "UPIPS" is a secure website utilized by the Board Special Education Services section to collect compliance and fiscal LEA data regarding students with disabilities, required under state and federal law.

R277-753-3. LEA Section 504 Reporting Requirements.

(1) An LEA shall include a count of students with Section 504 accommodations in its daily UTREx submission.

(2) An LEA shall report financial costs incurred as a result of Section 504 accommodations to the Superintendent through UPIPS by June 30 annually.

(3) An LEA's data submissions under this rule shall be broken down in the following categories:

(a) Autism;
(b) Brain Injury or Concussion Impairment;
(c) Hearing Impairment;
(d) Learning Impairment;
(e) Major Bodily Function Impairment;
(f) Medical Impairment;
(g) Mental Health Impairment;
(h) Orthopedic Impairment; and
(i) Other Impairment.

KEY: reporting, requirements, Section 504

August 7, 2017 Art X Sec 3
53A-1-401

R305. Environmental Quality, Administration.
R305-8. Board Member Attendance Requirements.
R305-8-101. Purpose and Authority.

The purpose of this rule is to establish standards for board member attendance at regularly scheduled board meeetings. This rule is authorized by Section 19-1-201(1)(d)(i)(A).

R305-8-102. Notification Requirement.

A board member shall notify the board chair of an absence at least two business days prior to the board meeting in order to be excused. A board member who fails to notify the board chair of an absence at least two business days prior to the board meeting shall not be excused.

R305-8-103. Standards for Attendance.

(1) In order to effectively execute board duties, board members shall regularly attend board meetings.

(2) A board member shall be deemed to be out of conformity with the requirement to regularly attend board meetings if:

(a) the member has two unexcused absences from a board meeting within a one-year period;

(b) the member misses three consecutive meetings for any reason; or

(c) the member misses one-third of the total number of board meetings in a one year period.

R305-8-104. Remedy for Failure to Meet Standards for Attendance.

(1) If a board member fails to meet standards for attendance, the board chair shall:

(a) notify the board member in writing; and

(b) schedule an agenda item for the next board meeting to consider dismissal of the board member.

(2) The board member shall be given an opportunity to address the board at that meeting.

(3) The Board may recommend to the Governor that the member be removed from the board.

KEY: board membership, board attendance, board member dismissal
December 19, 2012 19-1-201(1)(d)(i)(A)
Notice of Continuation December 8, 2017

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

"Air Pollutant Source" means private and public sources of emissions of air pollutants.

"Air Pollution" means the presence of an air pollutant in the ambient air in such quantities and duration and under conditions and circumstances, that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access. (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as found in 42 U.S.C. Chapter 85.

"Clean Coal Technology" means any technology,

including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Coating" means a material that can be applied to a substrate and which cures to form a continuous solid film for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, caulks, maskants, inks, and temporary protective coatings.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Composite vapor pressure" means the sum of the partial pressures of the compounds defined as VOCs.

"Condensable PM2.5" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air pollutant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air pollutant or an effluent which contains or may contain an air pollutant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air pollutant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air pollutant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

(i) Salt Lake County, effective August 18, 1997; and

(ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

(i) Salt Lake City, effective March 22, 1999;

(ii) Ogden City, effective May 8, 2001; and

(iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in

Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum or reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO2, NOx, and VOC.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as

measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

PM2.5: 10 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air pollutant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"VOC content" means the weight of VOC per volume of material and is calculated by the following equation in gram/liter (or alternately in pound/gallon, or pound/pound):

Grams of VOC per Liter of Material = Ws - Ww - Wes / Vm

Where:

Ws = weight of volatile organic compounds
Ww = weight of water
Wes = weight of exempt compounds
Vm = volume of material

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2016.

KEY: air pollution, definitions
December 6, 2017 19-2-104(1)(a)
Notice of Continuation May 8, 2014

R307. Environmental Quality, Air Quality.
R307-304. Solvent Cleaning.
R307-304-1. Purpose.

The purpose of R307-304 is to limit volatile organic compound (VOC) emissions from solvent cleaning operations.

R307-304-2. Applicability.

(1) R307-304 applies to solvent cleaning operations within Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties.

(2) Before September 1, 2018, R307-304 applies to an owner or operator using 720 gallons or more a year of VOC containing solvent products, minus exempt materials, for solvent cleaning operations.

(3) Effective September 1, 2018, R307-304 shall apply to an owner or operator using 55 gallons or more a year of VOC containing solvent products, minus exempt materials, for solvent cleaning operations.

R307-304-3. Exemptions.

(1) The requirements of R307-304 do not apply to the operations that are subject to R307-342 through R307-347 and R307-349 through R307-355.

(2) Shipbuilding and repair and fiberglass boat manufacturing materials.

(3) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces are exempt from the requirements of R307-304.

(4) Janitorial cleaning.

(5) Graffiti removal.

(6) Solvent cleaning in laboratory tests and analysis and research and development projects.

(7) Cleaning with aerosol products.

(8) Cleaning solvents that are defined as a consumer product in R307-357 are exempt from R307-304 and are regulated under the requirements in R307-357.

(9) Cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics.

R307-304-4. Definitions.

The following additional definitions apply to R307-304:

"Solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging. Solvent cleaning does not include degreasing operations subject to R307-335.

"Janitorial cleaning" means the cleaning of building floors, ceilings, walls, windows, doors, stairs, bathrooms, office surfaces and equipment.

R307-304-5. VOC Content Limits.

(1) No person shall use solvent products with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-304-7 or the alternative method in R307-304-5(2).

TABLE 1

Solvent Cleaning VOC Limits (excluding water and exempt solvents from the definition of volatile organic compounds found in R307-101-2)

Solvent Cleaning Category	VOC Limit (lb/gal) (g/L)
Coatings, adhesives and ink manufacturing	4.2 500
Electronic parts and components	4.2 500
Medical devices and pharmaceutical Tools, equipment and machinery	6.7 800
General surface cleaning	5.0 600
Screening printing operations	4.2 500
Semiconductor tools, maintenance and equipment cleaning	6.7 800
Advanced composites manufacturing	6.7 800
Baby and child care diapers manufacturing	5.0 500

(2) As an alternative to the limits in Table 1 and for all general miscellaneous cleaning operations, a person may use a cleaning material with a VOC composite vapor pressure no greater than 8 mm Hg at 20 degrees Celsius.

R307-304-6. Work Practices.

An owner or operator shall store used applicators and shop towels in closed fireproof containers.

R307-304-7. Add-on Emission Control Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on control system in accordance with the manufacturer recommendations and maintain an overall capture and control efficiency of at least 85%. The overall capture and control efficiency shall be determined using EPA approved methods, as follows:

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-304-8. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) The VOC content or composite vapor pressure of the solvent product applied and

(b) If an add-on control device is used, key system parameters necessary to ensure compliance with R307-304-7.

(i) Key system parameters must include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, solvent cleaning, solvent use
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-343. Wood Furniture Manufacturing Operations.
R307-343-1. Purpose.

The purpose of R307-343 is to limit volatile organic compound (VOC) emissions from wood furniture manufacturing operations.

R307-343-2. Applicability.

(1) R307-343 applies to wood furniture manufacturing coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-343 applies to wood furniture manufacturing operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-343 shall apply to wood furniture manufacturing operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-343-3. Definitions.

The following additional definitions apply to R307-343:

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Conventional Air Spray" means a spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than ten pounds per square inch (gauge) at the point of atomization. Airless, air assisted airless spray technologies, and electrostatic spray technology are not considered conventional air spray.

"Finishing material" means a coating used in the wood furniture industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Finishing Operation" means those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

"Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Stain" means any color coat having a solids content by weight of no more than 8.0% that is applied in single or multiple coats directly to the substrate, including nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

"Touch-up and Repair" means the application of finishing materials to cover minor finishing imperfections.

"Washcoat" means a transparent special purpose coating having a solids content by weight of 12.0% or less that is applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

"Washoff operations" means those operations in which organic solvent is used to remove coating from a substrate.

"Wood furniture" means any product made of wood that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712. This includes wood products such as rattan or wicker and engineered wood products such as particleboard.

"Wood furniture manufacturing operations" means the finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

R307-343-4. VOC Content Limits.

(1) No owner or operator shall apply coatings with a VOC content in excess of the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-343-6.

Table 1

WOOD MANUFACTURING COATING LIMITS
(values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limit (lb/gal)
Topcoat	0.4
Single component, non-catalyzed sealer	0.9
Single component, non-catalyzed topcoat	0.9
Acid -- cured single and 2 component sealer	1.2
Acid -- cured single and 2 component topcoat	1.0
2 component polyurethane topcoat	1.0
2 component polyurethane sealer	1.0
Cobalt peroxide cured polyester sealer/topcoat	1.0
Formaldehyde free acid catalyzed sealer/topcoat	1.0
Strippable spray booth coatings	0.8

(2) The limits in Table 1 do not apply to canned aerosol coating products used exclusively for touch-up or repair.

R307-343-5. Application Equipment Requirements.

(1) All coatings shall be applied using equipment having a minimum 65% transfer efficiency, except as allowed under R307-343-5(3) and operated according to the equipment manufacturer specifications. Equipment meeting the transfer efficiency requirement includes:

(a) Brush, dip, or roll coating;

(b) Electrostatic application; and

(c) High volume, low pressure (HVLP) spray equipment.

(2) Other coating application methods that achieve transfer efficiency equivalent to HVLP or electrostatic spray application methods may be used.

(3) Conventional air spray methods may be used under the following circumstances:

(a) To apply finishing materials that have no greater than 1.0 pound of VOC per pound of solids, as applied;

(b) For touch-up and repair under the following circumstances:

(i) The touch-up and repair occurs after completion of the finishing operation; or

(ii) The touch-up and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touch-up and repair are applied from a container that has a volume of no more than 2.0 gallons;

(c) When the spray gun is aimed and operated automatically, not manually;

(d) When the emissions from the finishing application station are directed to a control device as specified in R307-343-6;

(e) When the conventional air gun is used to apply no more than 10% of the total gallons of finishing material used

during the calendar year; or

(f) When the conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

R307-343-6. Add-on Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 85% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-343-7. Work Practices.

(1) Control techniques and work practices for coatings shall be implemented at all times to reduce VOC emissions. Control techniques and work practices shall include:

(a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed containers or pipes.

(2) The work practices for cleaning materials shall be implemented at all times to reduce VOC emissions. The work practices shall include:

(a) Storing all VOC-containing cleaning materials and used shop towels in closed containers;

(b) Ensuring that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing cleaning materials;

(d) Conveying VOC-containing cleaning materials from one location to another in closed containers or pipes; and

(e) Minimizing VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg or less at 20 degrees Celsius, unless an add-on control device is used as specified in R307-343-6.

R307-343-8. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-343. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-343.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-343-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, wood furniture, coatings
December 6, 2017 19-2-104(1)(a)
Notice of Continuation January 27, 2017 19-2-104(3)(e)

R307. Environmental Quality, Air Quality.
R307-344. Paper, Film, and Foil Coatings.
R307-344-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emissions from paper, film, and foil coating operations.

R307-344-2. Applicability.

(1) R307-344 applies to paper, film, and foil coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-344 applies to a paper, film and foil coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-344 shall apply to a paper, film and foil coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-344-3. Definitions.

The following additional definitions apply to R307-344:

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Film coating" means any coating applied in a web coating process on any film substrate other than paper or fabric, including, but not limited to, typewriter ribbons, photographic film, magnetic tape, and metal foil gift wrap.

"Foil coating" means a coating applied in a web coating process on any foil substrate other than paper or fabric, including, but not limited to, typewriter ribbons, photographic film, magnetic tape, and metal foil gift wrap, but excluding coatings applied to packaging used exclusively for food and health care products for human and animal consumption.

"Paper coating" means uniform distribution of coatings put on paper, film, foils and pressure sensitive tapes regardless of substrate. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Paper coating covers saturation operations as well as coating operations.

"Saturation" means dipping the web into a bath.

"Web" means a continuous sheet of substrate.

R307-344-4. VOC Content Limits.

No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-344-6.

TABLE 1

Paper, Film, and Foil Coating Limitations
(values in pounds VOC per pound of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/lb)
Paper, film and foil	0.08
Pressure sensitive tape and label	0.067

R307-344-5. Work Practices.

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Using covered containers for solvent wiping cloths;

(b) Using collection hoods for areas where solvent is used for cleanup;

(c) Minimizing spills of VOC-containing cleaning materials;

(d) Conveying VOC-containing materials from one location to another in closed containers or pipes; and

(e) Cleaning spray guns in enclosed systems

(2) No person shall apply coatings unless these materials are applied with equipment operated according to the manufacturer's specifications, and by the use of one of the following methods:

(a) Flow coater;

(b) Roll coater;

(c) Dip coater;

(d) Foam coater;

(e) Die coater;

(f) Hand application methods;

(g) High-volume, low pressure (HVLP) spray; or

(h) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-344-6.

R307-344-6. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-344-7. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-344. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-344.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-344-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: VOC emission, paper coating, film coating, foil coating
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-345. Fabric and Vinyl Coatings.
R307-345-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emissions from fabric and vinyl coating operations.

R307-345-2. Applicability.

(1) R307-345 applies to fabric and vinyl coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-345 applies to fabric and vinyl coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-345 shall apply to fabric and vinyl coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-345-3. Definitions.

The following additional definitions apply to R307-345:

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Fabric coating" means the coating or saturation of a textile substrate with a knife, roll or rotogravure coater to impart characteristics that are not initially present, such as strength, stability, water or acid repellency, or appearance. Fabric coatings can include, but are not limited to, industrial and electrical tapes, tie cord, utility meter seals, imitation leathers, tarpaulins, shoe material, and upholstery fabrics.

"Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Roller coating" the coating material is applied to the moving fabric, in a direction opposite to the movement of the substrate, by hard rubber or steel rolls.

"Rotogravure coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Vinyl coating" means applying a decorative or protective top coat, or printing on vinyl coated fabric or vinyl sheets.

R307-345-4. VOC Content Limits.

(1) No owner or operator shall apply fabric or vinyl coatings with a VOC content greater than 2.2 pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied, unless the owner or operator uses an add-on device as specified in R307-345-6.

(2) Organosol and plastisol coatings shall not be used to bubble emissions from vinyl printing and top coating.

R307-345-5. Work Practices.

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Covered containers for solvent wiping cloths;

(b) Collection hoods for areas where solvent is used for cleanup;

(c) Covered mixing tanks; and

(d) Covered hoods and oven routed to add-on control devices, which may include, but are not limited to, after burners, thermal incinerators, catalytic oxidation, or carbon adsorption.

(2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and must be operated in accordance with the manufacturers specifications:

(a) Foam coat;

(b) Flow coat;

(c) Roll coat;

(d) Dip coat;

(e) Die coat;

(e) High-volume, low-pressure (HVLP) spray;

(f) Hand application methods; or

(g) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-345-6.

R307-345-6. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-345-7. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-345. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-345.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-345-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, fabric coating, vinyl coating
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-346. Metal Furniture Surface Coatings.
R307-346-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emissions from metal furniture surface coating operations in application areas, flash-off areas, and ovens of metal furniture coating lines involved in prime and top-coat or single coat operations.

R307-346-2. Applicability.

(1) R307-346 applies to metal furniture surface coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-346 applies to metal furniture surface coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-346 shall apply to metal furniture surface coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-346-3. Exemptions.

(1) The requirements of R307-346 do not apply to the following:

(a) Stencil coatings;

(b) Safety-indicating coatings;

(c) Solid-film lubricants;

(d) Electrical-insulating and thermal-conducting coatings;

(e) Touch-up and repair coatings; or

(f) Coating applications utilizing hand-held aerosol cans.

R307-346-4. Definitions.

The following additional definitions apply to R307-346:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"Application area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means a coating that is cured at a temperature at or above 194 degrees Fahrenheit.

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Metal furniture surface coating" means the surface coating of any furniture made of metal or any metal part that will be assembled with other metal, wood fabric, plastic, or glass parts to form a furniture piece.

R307-346-5. VOC Content Limits.

No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-346-7.

TABLE 1

METAL FURNITURE SURFACE COATING VOC LIMITS
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal) Baked	Air Dried
General, One Component	2.3	2.3
General, Multi-Component	2.3	2.8
Extreme High Gloss	3.0	2.8
Extreme Performance	3.0	3.5
Heat Resistant	3.0	3.5
Metallic	3.5	3.5
Pretreatment Coatings	3.5	3.5
Solar Absorbent	3.0	3.5

R307-346-6. Work Practices.

(1) The owner or operator shall:

(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;

(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;

(c) Clean up spills immediately;

(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;

(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and

(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

(a) Electrostatic application;

(b) Electrodeposition;

(c) Brush coat;

(d) Flow coat;

(e) Roll coat;

(f) Dip coat;

(g) Continuous coating;

(h) High-volume, low-pressure (HVLP) spray; or

(i) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-346-7.

R307-346-7. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-346-8. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-346. Records shall include, but are not limited to, inventory

and product data sheets of all coatings and solvents subject to R307-346.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-346-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, surface coating, metal furniture
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-347. Large Appliance Surface Coatings.
R307-347-1. Purpose.

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from large appliance surface coating operations.

R307-347-2. Applicability.

(1) R307-347 applies to large appliance surface coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-347 applies to large appliance surface coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-347 shall apply to large appliance surface coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-347-3. Exemptions.

(1) The requirements of R307-347 do not apply to the following:

(a) Stencil coatings;
(b) Safety-indicating coatings;
(c) Solid-film lubricants;
(d) Electric-insulating and thermal-conducting coatings;
(e) Touch-up and repair coatings; or
(f) Coating applications utilizing hand-held aerosol cans.

R307-347-4. Definitions.

The following additional definitions apply to R307-347:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means a coating that is cured at a temperature at or above 198 degrees Fahrenheit.

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Large appliance" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.

R307-347-5. VOC Content Limits.

No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-347-7.

TABLE 1

Large Appliance Surface Coating Limitations
(values in pounds VOC per gallon of coating, minus water and exempt solvents(compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category (lb/gal)	VOC Content Limits	
	Baked	Air Dried
General, one component	2.3	2.3
General, multi-component	2.3	2.8
Extreme high gloss	3.0	2.8
Extreme performance	3.0	3.5
Heat resistance	3.0	3.5
Solar absorbent	3.0	3.5
Metallic	3.5	3.5
Pretreatment coatings	3.5	3.5

R307-347-6. Work Practices.

(1) The owner or operator shall:

(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;

(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;

(c) Clean up spills immediately;

(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;

(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and

(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) No person shall apply any coating unless the coating application method achieves a 65% or greater transfer efficiency. The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

(a) Electrostatic application;
(b) Electrodeposition;
(c) Brush coat;
(d) Flow coat;
(e) Roll coat;
(f) Dip coat;
(g) High-volume, low-pressure (HVLP) spray; or
(h) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-347-7.

R307-347-7. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-347-8. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-347. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-347.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-347-7.

(i) Key system parameters shall include, but are not

limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, large appliances, surface coating
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-348. Magnet Wire Coatings.
R307-348-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emissions from magnet wire coating operations.

R307-348-2. Applicability.

R307-348 applies to sources that emit 2 tons per year or more of VOC emissions, including related cleaning activities, that are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties. Operations that are exclusively covered by Department of Defense military technical data and performed by the United States Armed Forces are exempt from the requirements of R307-348.

R307-348-3. Definitions.

The following additional definition applies to R307-348:

"Magnet wire coating" means the process of applying coating of electrical insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

R307-348-4. VOC Content Limit.

No owner or operator shall apply coatings with a VOC content greater than 200 grams VOC per liter (1.7 pounds per gallon), excluding water, and exempt solvents (compounds not classified as VOCs as defined in R307-101-2), unless the owner or operator uses an add-on control device as specified in R307-348-6.

R307-348-5. Work Practices.

(1) The owner or operator shall:

(a) Store all VOC-containing coatings and cleaning materials in closed containers;

(b) Minimize spills of VOC-containing coatings and cleaning materials;

(c) Clean up spills immediately;

(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;

(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and

(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-348-6.

R307-348-6. Add-On Control Systems Operations.

(1) If an add-on control system is used it must be installed, operated, and maintained in accordance with manufacturer recommendations.

(a) An add-on control device must have a 90% or greater capture and control efficiency rating. Efficiency must be determined using EPA approved methods as follows:

(i) Capture efficiency must be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 C.F.R. Parts 51, Appendix M, Methods 204-204F, as applicable.

(ii) Control efficiency must be determined using test methods in Appendices A-1, A-6, and A-7 to 40 C.F.R. Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(iii) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-348-7. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-348. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-348.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-348-6.

(i) Key system parameters include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records must be maintained for a minimum of 2 years.

(3) Records must be made available to the director upon request.

KEY: air pollution, emission controls, surface coating, magnet wires
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-349. Flat Wood Paneling Coatings.
R307-349-1. Purpose.

The purpose of R307-349 is to limit volatile organic compound (VOC) emissions from flat wood paneling coating sources.

R307-349-2. Applicability.

(1) R307-349 applies to flat wood paneling coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-349 applies to flat wood paneling coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-349 shall apply to flat wood paneling coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-349-3. Definitions.

The following additional definitions apply to R307-349:

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Finishing material" means a coating used in the flat wood panel industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Flat wood paneling" means wood paneling products that are any decorative interior, exterior or tileboard (class I hardboard) panel to which a protective, decorative, or functional material or layer has been applied.

"Strippable booth coating" means a coating that is applied to a booth wall to provide a protective film to receive overspray during finishing and that is subsequently peeled and disposed. Strippable booth coatings are intended to reduce or eliminate the need to use organic solvents to clean booth walls.

R307-349-4. VOC Content Limit.

(1) No owner or operator shall apply coatings with a VOC content greater than 2.1 pounds of VOC per gallon, excluding water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), unless an add-on control device is used as specified in R307-349-6.

(2) No owner or operator shall use a strippable booth coating with a VOC content greater than 3.8 pounds VOC per gallon, excluding water and exempt solvents (compounds that are not defined as VOC), unless an add-on control device is used as specified in R307-349-6.

R307-349-5. Work Practice.

(1) The owner or operator shall:

(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;

(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;

(c) Clean up spills immediately;

(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;

(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and

(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying of equipment.

(2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

(a) Paint brush;

(b) Flow coat;

(c) Roll coat;

(d) Dip coat;

(e) Detailing or touch-up guns;

(e) High-volume, low-pressure (HVLP) spray;

(f) Hand application methods; or

(g) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) No owner or operator shall perform solvent cleaning operations using materials with a VOC composite vapor pressure greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-349-6.

R307-349-6. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-349-7. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-349. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-349.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-349-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, flat wood paneling, coatings
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-350. Miscellaneous Metal Parts and Products Coatings.
R307-350-1. Purpose.

The purpose of R307-350 is to limit volatile organic compound (VOC) emissions from miscellaneous metal parts and products coating operations.

R307-350-2. Applicability.

(1) R307-350 applies to miscellaneous metal parts and products coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-350 applies to miscellaneous metal parts and products coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-350 shall apply to miscellaneous metal parts and products coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

(4) R307-350 applies to, but is not limited to, the following:

(a) Large farm machinery (harvesting, fertilizing, planting, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.)

(c) Small appliance (fans, mixers, blenders, crock pots, vacuum cleaners, etc.);

(d) Commercial machinery (computers, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, trailer frames, etc.); and

(g) Any other industrial category that coats metal parts or products under the standard Industrial Classification Code of major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectric machinery), major group 36 (electrical machinery), major group 37 (transportation equipment) major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).

R307-350-3. Exemptions.

(1) The requirements of R307-350 do not apply to the following:

(a) The surface coating of automobiles subject to R307-354 and light-duty trucks;

(b) Flat metal sheets and strips in the form of rolls or coils;

(c) Surface coating of aerospace vehicles and components subject to R307-355;

(d) The exterior of marine vessels;

(e) Customized top coating of automobiles and trucks if production is less than 35 vehicles per day;

(f) Military munitions manufactured by or for the Armed Forces of the United States;

(g) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces;

(h) Stripping of cured coatings and adhesives;

(i) Canned aerosol coating products;

(j) Research and development, quality control, or performance testing activities; or

(k) The provisions of R307-350 shall not apply to coating products on medical devices up to 800 pounds of VOC per year.

(2) The requirements of R307-350-5 do not apply to the following:

(a) Stencil and hand lettering coatings;

(b) Safety-indicating coatings;

(c) Solid-film lubricants;

(d) Electric-insulating and thermal-conducting coatings;

(e) Magnetic data storage disk coatings; or

(f) Plastic extruded onto metal parts to form a coating.

(3) The requirements of R307-350-6 do not apply to the following:

(a) Touch-up coatings;

(b) Repair coatings; or

(c) Textured finishes.

R307-350-4. Definitions.

The following additional definitions apply to R307-350:

"Aerospace vehicles and components" is defined in R307-355.

"Air dried coating" means coatings that are dried by the use of air or forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

"Camouflage coating" means coatings that are used, principally by the military, to conceal equipment from detection.

"Cured coating or adhesive" means a coating or adhesive, which is dry to the touch.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Dip coating" means a method of applying coatings to a substrate by submersion into and removal from a coating bath.

"Electric-insulating varnish" means a non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

"Electric-insulating and thermal-conducting" means a coating that is characterized as having an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Electrostatic application" means a method of applying coating particles or coating droplets to a grounded substrate by electrically charging them.

"Etching filler" mean a coating that contains less than 23% solids by weight and at least 0.5% acid by weight, and is used instead of applying a pretreatment coating followed by a primer.

"Extreme high-gloss coating" means a coating which, when tested by the American Society for Testing Material (ASTM) Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degree meter.

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Flow coat" means a non-atomized technique of applying coatings to a substrate with a fluid nozzle in a fan pattern with no air supplied to the nozzle.

"Hand lettering" means an application method utilizing small paint markers, paint brush, or other similar appliance that is administered by hand application equipment to add identification letters, numbers, or markings on a substrate.

"Heat-resistant coating" means a coating that must withstand a temperature of at least 400 degrees Fahrenheit during normal use.

"High-performance architectural coating" means a coating used to protect architectural subsections and which meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 605.2-1980.

"High-temperature coating" means a coating that is certified to withstand a temperature of 1,000 degrees Fahrenheit for 24 hours.

"High-volume, low-pressure (HVLP) spray" means a coating application system which is designed to be operated and which is operated between 0.1 and 10 pounds per square inch gauge (psig) air pressure, measured dynamically at the center of the air cap and the air horns.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar article including any component or accessory, that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body. For the purpose of this rule, a medical device shall also include associated manufacturing or assembly apparatus.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating, as applied.

"Military specification coating" means a coating applied to metal parts and products and which has a formulation approved by a United States military agency for use on military equipment.

"Mold-seal coating" means the initial coating applied to a new mold or repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity of the coating, is not considered a component.

"Pan backing coating" means a coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

"Prefabricated architectural component coatings" means coatings applied to metal parts and products that are to be used as an architectural structure or their appurtenances including, but not limited to, hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, and large fixed stationary tools.

"Pretreatment coating" means a coating which contains no more than 12% solids by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Silicone release coating" means any coating which contains silicone resin and is intended to prevent food from sticking to metal surfaces.

"Solar-absorbent coating" means a coating which has as its prime purpose the absorption of solar radiation.

"Solid-film lubricant" means a very thin coating consisting of a binder system containing as its chief pigment material one or more of molybdenum disulfide, graphite, polytetrafluoroethylene (PTEF) or other solids that act as a dry lubricant between faying surfaces.

"Stencil coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters, numbers, or markings to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Repair and touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Vacuum-metalizing coating" means the undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to a metal film.

R307-350-5. VOC Content Limits.

(1) No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-350-8.

TABLE 1

METAL PARTS AND PRODUCTS VOC CONTENT LIMITS
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal) Air Dried	Baked
General One Component	2.8	2.3
General Multi Component	2.8	2.3
Camouflage	3.5	3.5
Electric-Insulating varnish	3.5	3.5
Etching Filler	3.5	3.5
Extreme High-Gloss	3.5	3.0
Extreme Performance	3.5	3.0
Heat-Resistant	3.5	3.0
High-Performance architectural	6.2	6.2
High-Temperature	3.5	3.5
Metallic	3.5	3.5
Military Specification	2.8	2.3
Mold-Seal	3.5	3.5
Pan Backing	3.5	3.5
Prefabricated Architectural Multi-Component	3.5	2.3
Prefabricated Architectural One-Component	3.5	2.3
Pretreatment Coatings	3.5	3.5
Repair and Touch Up	3.5	3.0
Silicone Release	3.5	3.5
Solar-Absorbent	3.5	3.0
Vacuum-Metalizing	3.5	3.5
Drum Coating, New, Exterior	2.8	2.8
Drum Coating, New, Interior	3.5	3.5
Drum Coating, Reconditioned, Exterior	3.5	3.5
Drum Coating, Reconditioned, Interior	4.2	4.2

(2) If more than one content limit indicated in this section applies to a specific coating, then the most stringent content limit shall apply.

R307-350-6. Application Methods.

No owner or operator shall apply VOC containing coatings to metal parts and products unless the coating is applied with equipment operated according to the equipment manufacturer specifications, and by the use of one of the following methods:

(1) Electrostatic application;
(2) Flow coat;
(3) Dip/electrodeposition coat;
(4) Roll coat;
(5) Hand Application Methods;
(6) High-volume, low-pressure (HVLP) spray; or
(7) Another application method capable of achieving 65% or greater transfer efficiency equivalent or better to HVLP spray, as certified by the manufacturer.

R307-350-7. Work Practices.

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions. Control techniques and work practices shall include:

(a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers, containers with activated carbon or other control method approved by the EPA Administrator;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials, unless a container has activated carbon or other control method approved by the EPA Administrator;

(c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed containers, containers with activated carbon or other control method approved by the EPA Administrator, or pipes; and

(e) Minimizing VOC emission from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(2) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-350-8.

R307-350-8. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-350-9. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-350. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-350-8.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, coatings, miscellaneous metal parts
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-351. Graphic Arts.
R307-351-1. Purpose.

The purpose of R307-351 is to limit volatile organic compound (VOC) emissions from graphic arts printing operations.

R307-351-2. Applicability.

(1) R307-351 applies to graphic arts printing operations located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele and Weber counties.

(2) Before September 1, 2018, R307-351 applies to graphic arts printing operations that emit 2.7 tons or greater per year of VOC emissions.

(3) Effective September 1, 2018, R307-351 shall apply to graphic arts printing operations that use a combined 450 gallons or more of all VOC-containing materials per year.

R307-351-3. Exemptions.

(1) The provisions of R307-351 shall not apply to graphic arts materials that have a VOC content of less than 25 g/L , minus water and exempt VOCs, as applied.

(2) A graphic arts printing operation may use up to 55 gallons of cleaning materials per year that do not comply with the VOC composite vapor pressure requirement or the VOC content requirement in R307-351-5(4).

(3) The provisions of R307-351 shall not apply to medical devices and their packaging.

R307-351-4. Definitions.

The following additional definitions apply to R307-351:

"Alcohol" means any of the following compounds, when used as a fountain solution additive for offset lithographic printing: ethanol, n-propanol, and isopropanol.

"Alcohol Substitute" means a non-alcohol additive that contains VOCs and is used in the fountain solution.

"Cleaning materials and solutions" means a liquid solvent or solution used to clean the operating surfaces of a printing press and its parts. Cleaning materials and solutions include, but are not limited to blanket wash, roller wash, metering roller cleaner, plate cleaner, impression cylinder washes, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink or coating from areas around the press.

"Blanket" means a synthetic rubber material that is wrapped around a cylinder used in offset lithography to transfer or "offset" an image from an image carrier.

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Flexographic printing" means the application of words, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Fountain solution" means a mixture of water and other volatile and non-volatile chemicals and additives that wets the non-image area of a lithographic printing plate so that the ink is maintained within the image areas.

"Graphic arts materials" means any inks, coatings, or adhesives, including added thinners or retarders, used in printing or related coating or laminating processes.

"Graphic arts printing" means the application of words and images using the offset lithographic, letterpress, rotogravure, or flexographic printing process.

"Heatset" means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

"Letterpress printing" means a method where the image area is raised relative to the non-image area and the ink is transferred to the substrate directly from the image surface.

"Non-heatset", also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink dries by oxidation and/or absorption into the substrate without use of heat from dryers. For the purposes of this rule, use of an infrared heater or printing conducted using ultraviolet-cured or electron beam-cured inks is considered non-heatset.

"Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar article including any component or accessory, that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body. For the purpose of this rule, a medical device shall also include associated manufacturing or assembly apparatus.

"Offset lithographic printing" means a plane-o-graphic method in which the image and non-image areas are on the same plane and the ink is offset from a plate to a rubber blanket, and then from the blanket to the substrate.

"Printing operation" means the application of words, designs, or pictures on a substrate. All units in a machine which have both coating and printing units shall be considered as performing a printing operation.

"Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique that involves a recessed image area in the form of cells.

"Web" means a continuous roll of substrate.

R307-351-5. VOC Content Limits.

(1) No owner or operator shall apply graphic arts materials with a VOC content greater than the amounts specified in Table 1 or Table 2, unless the owner or operator uses an add-on control device as specified in R307-351-6.

TABLE 1

VOC Limits
(values in gram of VOC per liter, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2)

Graphic Art Material	VOC Limit (g/L)
Adhesive	150
Coating	300
Flexographic Fluorescent Ink	300
Flexographic Ink-Non-Porous Substrate	300
Flexographic Ink-Porous Substrate	225
Gravure Ink	300
Letterpress Ink	300
Offset Lithographic Ink	300
Heatset Web Offset Litographic ink	300
Heatset Web Offset Lithographic Ink:	
Used on Book Presses and Presses Less Than 22 Inches in Diameter	400
Used on Presses With Potential to Emit Less Than 10 Tons/Year	400

(2) No owner or operator shall apply fountain solution, including additives with a VOC content greater than the amounts specified in Table 2, unless the owner or operator uses an add-on control device as specified in R307-351-6.

TABLE 2

VOC Limits
(values in gram of VOC per liter, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied

Graphic Art Material	VOC Limit (g/L)

Heatset Web-Fed	
Alcohol without Refrigerated Chiller	16
Alcohol with Refrigerated Chiller	30
Alcohol Substitute	50
Sheet-Fed	
Alcohol without Refrigerated Chiller	50
Alcohol with Refrigerated Chiller	85
Alcohol Substitute	50
Non-Heatset Web-Fed	
All Alcohol Substitutes	50

(3) Alcohol containing fountain solutions shall not be used in non-heatset web-fed operations.

(4) Cleaning materials with a VOC composite vapor pressure of less than 10 mm Hg at 68 degrees Fahrenheit or cleaning materials containing less than 50 percent VOC by weight shall be used.

R307-351-6. Add-on Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations.

(a) Control devices for individual heatset web offset lithographic printing presses and individual heatset web letterpress printing press dryers that were installed prior to January 1, 2017, must maintain a 90% or greater control efficiency. Similar control devices installed after January 1, 2017, must maintain a 95% or greater control efficiency.

(b) Control devices for individual flexographic printing presses and individual rotogravure printing presses shall comply with a 90% or greater overall control efficiency.

(c) As an alternative to the control efficiency, the control device outlet concentration may be reduced to 20 ppmv as hexane on a dry basis to accommodate situations where the inlet VOC concentration is low or there is no identifiable measurable inlet. The control outlet concentration shall be determined using EPA Method 25A.

(d) The capture efficiency of a VOC emission control system's VOC collection device for flexographic and rotogravure presses shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(e) The capture efficiency of a VOC emission control system's VOC collection device for a heatset web offset press shall be determined by demonstrating that the airflow in the dryer is negative to the surrounding pressroom during the initial test using an air flow direction indicator, such as a smoke stick or aluminum ribbons, or differential pressure gauge.

(f) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(g) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-351-7. Work Practices.

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Keeping cleaning materials, used shop towels, and solvent wiping cloths in closed containers; and

(b) Minimizing spills of VOC-containing cleaning materials.

R307-351-8. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-351. Records must include, but are not limited to, inventory and product data sheets of all graphic arts materials and cleaning solutions subject to R307-351.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-351-6. Key system parameters include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule. Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate that operations provide continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, graphic arts, VOC, printing operations
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-352. Metal Container, Closure, and Coil Coatings.
R307-352-1. Purpose.

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from the coating of metal containers, closures and coils in the manufacturing or reconditioning process.

R307-352-2. Applicability.

(1) R307-352 applies to metal containers, closure and coil coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-352 applies to metal containers, closure and coil coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-352 shall apply to metal containers, closure and coil coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-352-3. Definitions.

The following additional definitions apply to R307-352:

"Aerosol coating product" means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force but does not include pump sprays.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"End sealing compound" means a compound which is coated onto can ends and which functions as a gasket when the end is assembled onto the can.

"Exterior body spray" means a coating sprayed on the exterior of the container body to provide a decorative or protective finish.

"Interior body spray" means a coating sprayed on the interior of the container body to provide a protective film between the product and the can.

"Metal container or closure coating" means any coating applied to either the interior or exterior of formed metal cans, pails, lids or crowns or flat metal sheets which are intended to be formed into cans, pails, lids or crowns.

"Overvarnish" means a coating applied directly over a design coating to reduce the coefficient of friction, to provide gloss, and to protect the finish against abrasion and corrosion.

"Reconditioned" means any metal container which is reused, recycled or remanufactured.

"Three-piece can coating" means a coating sprayed on the exterior and/or interior of a welded, cemented or soldered seam to protect the exposed metal.

"Two-piece can exterior coating" means a coating applied to the exterior bottom end of a can to reduce the coefficient of friction and to provide protection to the metal.

R307-352-4. VOC Content Limits.

(1) Operations that use aerosol coating products are exempt.

(2) No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-352-6.

TABLE 1

METAL CONTAINER AND CLOSURE COIL COATING LIMITATIONS
(values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)
CANS	
Sheet basecoat (interior and exterior) and overvarnish	1.9
Two-piece can exterior basecoat, overvarnish, and end coating	2.1
Interior body spray	
Two-piece cans	3.5
Three-piece cans	3.0
Three-piece can side seam spray	5.5
End sealing compound: Food cans, non-food cans, and beverage cans	0.1
Exterior body spray	3.5
PAILS AND LIDS	
Body spray	
Reconditioned interior	4.2
Reconditioned exterior	3.5
New interior	3.5
New exterior	2.8
End sealing compound	0.5
Inks, all applications	2.5
Coil	
Coil coating	1.7

R307-352-5. Work Practices.

(1) The owner or operator shall:

(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;

(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;

(c) Clean up spills immediately;

(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;

(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and

(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) No person shall apply any coating unless the coating application method has a transfer efficiency of at least 65%.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

(a) Electrostatic application;
(b) Flow coat;
(c) Roll coat;
(d) Dip coat;
(e) High-volume, low-pressure (HVLP) spray;
(f) Hand application methods;
(g) Printing techniques; or
(h) Other application method capable of achieving at least 65% transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-352-6.

R307-352-6. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and

control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-352-7. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-352. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-352.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-352-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, metal containers, coil coatings
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-353. Plastic Parts Coatings.
R307-353-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emissions from the application of coatings to any plastic product.

R307-353-2. Applicability.

(1) R307-353 applies to plastic parts coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-353 applies to plastic parts coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-353 shall apply to plastic parts coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-353-3. Exemptions.

(1) The provisions of this rule shall not apply to any of the following:

(a) Stencil coatings;

(b) Safety-indicating coatings;

(c) Electric-insulating and thermal-conducting coatings;

(d) Magnetic data storage disk coatings;

(e) Plastic extruded onto metal parts to form a coating; and

(f) Textured finishes.

(2) If a coating line is subject to the requirements for existing automobile, light-duty truck, and other product and material coatings or for existing metallic surface coating lines, the coating line shall be exempt from this rule.

(3) Canned aerosol coating products up to 22 fl. oz. that are used exclusively for touch-up and repairs.

(4) Aerospace vehicles and components subject to R307-355.

(5) The provisions of R307-353 shall not apply to coating products on medical devices up to 800 pounds of VOC per year. (6) Research and development, quality control, or performance testing activities.

R307-353-4. Definitions.

The following additional definitions apply to R307-353:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

"Electric-insulating and thermal-conducting" means a coating that displays an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar article including any component or accessory, that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body. For the purpose of this rule, a medical device shall also include associated manufacturing or assembly apparatus.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating as applied.

"Military specification coating" means a coating which has a formulation approved by a United States military agency for use on military equipment.

"Mirror backing" means the coating applied over the silvered surface of a mirror.

"Mold-seal coating" means the initial coating applied to a new mold or a repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-colored coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to from an acceptable dry film. A thinner necessary to reduce the viscosity is not considered a component.

"Optical coating" means a coating applied to an optical lens.

"Plastic" means a substrate containing one or more resigns that may be solid, porous, flexible, or rigid, and includes fiber reinforced plastic composites.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Roller Coated" means a type of coating application equipment that utilizes a series of mechanical rollers to form a thin coating film on the surface of a roller, which is then applied to a substrate by moving the substrate underneath the roller.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Stencil coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters or numbers to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

R307-353-5. VOC Content Limits.

(1) For automobile and truck plastic parts coating lines:

(a) No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-353-8.

(b) For red and black coatings, the content limitation shall be determined by multiplying the appropriate limit in Table 1 by 1.15.

(c) When EPA Method 24 is used to determine the VOC content of a high bake coating, the applicable content limitation shall be determined by adding 0.5 to the appropriate limit in Table 1.

(d) When EPA Method 24 is used to determine the

VOC content of an air-dried coating, the applicable content limitation shall be determined by adding 0.1 to the appropriate limit in Table 1.

TABLE 1

AUTOMOBILE AND TRUCK PLASTIC PARTS COATING LINES
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)
High bake coating - exterior and interior parts	
Prime	
Flexible coating	4.5
Nonflexible coating	3.5
Topcoat	
Basecoat	4.3
Clearcoat	4.0
Non-basecoat/clearcoat	4.3
Air-dried coating - exterior parts	
Prime	4.8
Topcoat	
Basecoat	5.0
Clearcoat	4.5
Non-basecoat/clearcoat	5.0
Air-dried coating - interior parts	5.0
Touch-up and repair	5.2

(2) No owner or operator of a business machine plastic parts coating line shall apply coatings with a VOC content greater than the amounts specified in Table 2, unless the owner or operator uses an add-on control device as specified in R307-353-8.

TABLE 2

BUSINESS MACHINE PLASTIC PARTS COATING LINES
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)
Prime	2.9
Topcoat	2.9
Texture coat	2.9
Fog coat	2.2
Touch-up and repair	2.9

(3) No owner or operator engaged in the other plastic product coating operations listed in Table 3 shall apply coatings with a VOC content greater than the amounts specified in Table 3, unless the owner or operator uses an add-on control device as specified in R307-353-8.

TABLE 3

OTHER PLASTIC PRODUCT COATING CATEGORIES
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)
General One-Component	2.3
General Multi-Component	3.5
Electric Dissipating Coatings And Shock-Free Coatings	3.0
Extreme Performance	3.5 (2-pack coatings)
Metallic	3.5
Military Specification	2.8 (1 pack) 3.5 (2 pack)
Mold-Seal	6.3
Multi-colored Coatings	5.7
Optical Coatings	6.7
Vacuum-Metalizing	6.7
Mirror Backing	
Curtain Coated	4.2
Roll Coated	3.6

(4) If a part consists of both plastic and metal surfaces, then the coatings applied to the part must comply with the content limits of this rule.

R307-353-6. Application Methods.

No person shall apply VOC containing coatings unless the coating is applied with equipment operated according to the manufacturer specifications, and by use of one of the following methods:

(1) Electrostatic application;
(2) Flow coat;
(3) Roller coat;
(4) Dip/electrodeposition coat;
(5) Airless Spray;
(6) High-volume, low-pressure (HVLP) spray; or
(7) Other application method equal to or better than HVLP, as certified by the manufacturer.

R307-353-7. Work Practices.

(1) The owner or operator shall:
(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
(c) Clean up spills immediately;
(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.
(2) Solvent cleaning operations shall be performed using cleaning material having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-353-8.

R307-353-8. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.
(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix

M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-353-9. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-353. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-353.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-353-8.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, coatings, plastic parts
December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-354. Automotive Refinishing Coatings.
R307-354-1. Purpose.

The purpose of R307-354 is to limit volatile organic compound emissions (VOC) from automotive refinishing sources.

R307-354-2. Applicability.

(1) R307-354 applies to automotive refinishing coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-354 applies to an automotive refinishing operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-354 shall apply to an automotive refinishing operation that uses a combined 20 gallons or more of coating products and associated solvents per year.

R307-354-3. Exemptions.

The requirements of R307-354 shall not apply to any canned aerosol coating products.

R307-354-4. Definitions.

The following additional definitions apply to R307-354:

"Adhesion promoter" means a coating which is labeled and formulated to be applied to uncoated plastic surfaces to facilitate bonding of subsequent coatings, and on which, a subsequent coating is applied.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Automotive" means passenger cars, vans, motorcycles, trucks, buses, golf carts and all other mobile equipment.

"Automotive refinishing" means the process of coating automobiles, after-market automobiles, motorcycles, light and medium-duty trucks and vans that are performed in auto body shops, auto repair shops, production paint shops, new car dealer repair and paint shops, fleet operation repair and paint shops, and any other facility which coats vehicles under the Standard Industrial Classification Code 7532 (Top, Body and Upholstery Repair Shops and Paint Shops). This includes dealer repair of vehicles damaged in transit. It does not include refinishing operations for other types of mobile equipment, such as farm machinery and construction equipment or their parts, including partial body collision repairs, that is subsequent to the original coating applied at an automobile original equipment manufacturing plant.

"Clear coating" means any coating that contains no pigments and is labeled and formulated for application over a color coating or clear coating.

"Color coating" means any pigmented coating, excluding adhesion promoters, primers, and multi-color coatings, that requires a subsequent clear coating and which is applied over a primer, adhesion promoter, or color coating. Color coatings include metallic and iridescent color coatings.

"Enclosed paint gun cleaner" means a cleaner consisting of a closed container with a door or top that can be opened and closed and fitted with cleaning connections. The spray gun is attached to a connection, and solvent is pumped through the gun and onto the exterior of the gun. Cleaning solvent falls back into the cleaner's solvent reservoir for recirculation.

"Metallic/Iridescent color coating" means a coating which contains iridescent particles, composed of either metal as metallic particles or silicon as mica particles, in excess of 0.042 pounds per gallon as applied, where such particles are visible in the dried film.

"Multi-color coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Non-enclosed paint gun cleaner" means cleaner consisting of a basin similar to a sink in which the operator washes the outside of the gun under a solvent stream. The gun cup is filled with recirculated solvent, the gun tip is placed into a canister attached to the basin, and suction draws the solvent from the cup through the gun. The solvent gravitates to the bottom of the basin and drains through a small hole to a reservoir that supplies solvent to the recirculation pump.

"Pretreatment coating" means a coating which contains no more that 16% solids, by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to bare metal surfaces to provide corrosion resistance and promote adhesion for subsequent coatings.

"Primer" means any coating which is labeled and formulated for application to a substrate to provide a bond between the substrate and subsequent coats; corrosion resistance; a smooth substrate surface; or resistance to penetration of subsequent coats, and on which a subsequent coating is applied. Primers may be pigmented.

"Primer sealer" means any coating which is labeled and formulated for application prior to the application of a color coating for the purpose of color uniformity, or to promote the ability of the underlying coating to resist penetration by the color coating.

"Single-stage coating" means any pigmented coating, excluding primers and multi-color coatings, labeled and formulated for application without a subsequent clear coat. Single-stage coatings include single-stage metallic/iridescent coatings.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Temporary protective coating" means any coating which is labeled and formulated for the purpose of temporarily protecting areas form overspray or mechanical damage.

"Topcoat" means any coating or series of coatings applied over a primer or an existing finish for the purpose of protection or beautification.

"Truck bed liner coating" means any coating, excluding clear, color, multi-color, and single-stage coatings, labeled and formulated for application to a truck bed to protect it from surface abrasion.

"Underbody coating" means any coating labeled and formulated for application to wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, or the underside of a motor vehicle.

"Uniform finish coating" means any coating labeled and formulated for application to the area around a spot repair for the purpose of blending a repaired area's color or clear coat to match the appearance of an adjacent area's existing coating.

R307-354-5. VOC Content Limits.

No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-354-7.

TABLE 1

AUTOMOTIVE REFINISHING VOC LIMITS
(values in pounds of VOC per gallon of coating, minus water and exempt solvent (compounds not defined as VOC in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)

Adhesion Promoter	4.5
Clear Coating	2.1
Color Coating	3.5
Multi-color Coating	5.7
Pretreatment Coating	5.5
Primer	2.1
Primer Sealer	2.1
Single-stage Coating	2.8
Temporary Protective Coating	0.5
Truck Bed Liner Coating	2.6
Underbody Coating	3.6
Uniform Finish Coating	4.5
Any Other Coating Type	2.1

R307-354-6. Work Practice.

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Closed containers shall be used for the disposal of solvent wiping cloths;

(b) Minimizing spills of VOC-containing cleaning materials;

(c) Conveying VOC-containing materials from one location to another in closed containers or pipes; and

(d) Cleaning spray guns in enclosed systems or in a non-enclosed paint gun cleaning process may be used if the vapor pressure of the cleaning solvent (excluding water and solvents exempt from the definition of VOCs) is less than 100 mm Hg at 68 degrees Fahrenheit and the solvent is directed towards a drain that leads directly to an enclosed remote reservoir. Automotive spray gun solvent cleaning materials that are defined as a "consumer product" under R307-357 are exempt from the vapor pressure requirement and are regulated under the requirements in R307-357.

(2) Application equipment requirements:

(a) A person shall not apply any coating to an automotive part or component unless the coating application method achieves a minimum 65% transfer efficiency. The following coating application methods have been demonstrated to achieve a minimum of 65% transfer efficiency:

(i) Brush, dip or roll coating operated in accordance with the manufacturers specifications;

(ii) Electrostatic application equipment operated in accordance with the manufacturers specifications; and

(iii) High Volume, Low Pressure spray equipment operated in accordance with the manufacturers specifications.

(3) Other coating application methods may be used that have been demonstrated to be capable of achieving at least 65% transfer efficiency, as certified by the manufacturer.

R307-354-7. Add-On Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-354-8. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-354. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-354.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-354-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records must be maintained for a minimum of 2 years.

(3) Records must be made available to the director upon request.

KEY: air pollution, automotive refinishing, VOC, coatings

December 6, 2017 19-2-104(1)(a)

R307. Environmental Quality, Air Quality.
R307-355. Aerospace Manufacture and Rework Facilities.
R307-355-1. Purpose.

The purpose of R307-355 is to limit the emissions of volatile organic compounds (VOCs) from aerospace coatings and adhesives, from organic solvent cleaning, and from the storage and disposal of solvents and waste solvent materials.

R307-355-2. Applicability.

(1) R307-355 applies to all aerospace manufacture and rework facilities located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele or Weber counties.

(2) Before February 1, 2018, R307-355 applies to all aerospace manufacture and rework facilities that have the potential to emit 10 tons or more per year of VOCs.

(3) Effective February 2, 2018, R307-355 applies to all aerospace manufacture and rework facilities that use a combined 55 gallons or more of coating products and associated solvents and adhesives per year.

R307-355-3. Exemptions.

(1) R307-355 does not apply to the following:

(a) Cleaning and coating activities in research and development, quality control, laboratory testing, and electronic parts and assemblies, except for cleaning and coating of completed assemblies;

(b) Manufacturing or rework operations involving space vehicles;

(c) Rework operations performed on antique aerospace vehicles or components;

(d) Touchup and repair operations;

(e) Hand-held aerosol spray cans up to 24 fluid ounces;

(f) Department of Defense classified coatings;

(g) Separate formulations that are used in volumes of less than 50 gallon per year subject to a maximum exemption of 200 gallons in any calendar year; and

(h) Adhesives with separate formulations that are used in volumes of less than 0.5 gallons on any day or 10 gallons in any calendar year.

R307-355-4. Definitions.

The following additional definitions apply to R307-355:

"Ablative coating" means a coating, applied to both new and rework aerospace components, which chars and becomes intumescent when exposed to open flame, such as would occur during the failure of an engine casing. The purpose of the coating is to act as an isolative barrier and protect adjacent metal parts from an open flame.

"Adhesion promoter" means a very thin coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

"Adhesive bonding primer" means a primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250 degrees Fahrenheit or below and primers with a design cure above 250 degrees Fahrenheit.

"Aerospace manufacture and rework facility" means any installation that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Aerospace vehicle or component" means any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, and tooling. It also includes auxiliary equipment associated with test, transport and storage that through contamination can compromise aerospace vehicle performance.

"Antique aerospace vehicle or component" means an aircraft or component thereof that was built at least 30 years ago and would not routinely be in commercial or military service in the capacity for which it was designed.

"Bearing coating" means a coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

"Caulking and smoothing compounds" means semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

"Chemical agent-resistant coating" means an exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

"Chemical milling maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant.

"Clear coating" means a transparent coating usually applied over a colored opaque coating, metallic substrate, or placard to give improved gloss and protection to the color coat. In some cases, a clear coat refers to any transparent coating without regard to substrate.

"Commercial exterior aerodynamic structure primer" means a primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

"Compatible substrate primer" means either compatible epoxy primer or adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxypolyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that:

(1) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application, or

(2) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

"Corrosion prevention" means a coating that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

"Cryoprotective coating" means a coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

"Electric or radiation-effect coating" means a coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are exempt.

"Electrostatic discharge and electromagnetic interference (EMI) coating" means a coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

"Elevated-temperature Skydrol-resistant primer" means a primer that must withstand immersion in phosphate-ester (PE) hydraulic fluid (Skydrol 500b A-9 or equivalent) at the elevated temperature of 150 degrees Fahrenheit for 1,000 hours.

"Epoxy polyamide topcoat" means a coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

"Fire-resistant (interior) coating" means for civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

"Flexible primer" means a primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

"Flight test coating" means a coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

"Fuel tank coating" means a coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.

"General aviation" means that segment of civil aviation that encompasses all facets of aviation except air carriers, commuters, and military. General aviation includes charter and corporate-executive transportation, instruction, rental, aerial application, aerial observation, business, pleasure, and other special uses.

"High-temperature coating" means a coating designed to withstand temperatures of more than 350 degrees Fahrenheit.

"Insulation covering" means material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

"Intermediate release coating" means a thin coating applied beneath topcoats to assist in removing the topcoat in depainting operations and generally to allow the use of less hazardous depainting methods.

"Lacquer" means a clear or pigmented coating formulated with anitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

"Low vapor pressure hydrocarbon-based cleaning solvent" means a cleaning solvent that is composed of a mixture of photochemically reactive hydrocarbons and oxygenated hydrocarbons and has a maximum vapor pressure of 7 mm Hg at 68 degrees Fahrenheit. These cleaners must not contain hazardous air pollutants.

"Maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant.

"Metalized epoxy coating" means a coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

"Mold release" means a coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

"Optical anti-reflection coating" means a coating with a low reflectance in the infrared and visible wavelength ranges that is used for antireflection on or near optical and laser hardware.

"Part marking coating" means coatings or inks used to make identifying markings on materials, components, and/or assemblies. These markings may be either permanent or temporary.

"Pretreatment coating" means an organic coating that contains at least 0.5 percent acids by weight and is applied directly to A-12 metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

"Primer" means the first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent coatings. Primers that are defined as specialty coatings are not included under this definition.

"Rain erosion resistant coating" means a coating applied primarily to radomes, canopies, and leading edges of aircraft to provide protection from erosion due to rain, dust, and other airborne particles.

"Rework facility" means any installation that repairs any aerospace vehicle or component.

"Rocket motor nozzle coating" means a catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

"Scale inhibitor" means a coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

"Screen print ink" means an ink used in screen printing processes during fabrication of decorative laminates and decals.

"Sealant" means a material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

"Silicone insulation material" means an insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

"Solid film lubricant" means a dry lubricant coating used to reduce friction between faying metal surfaces. The coating consists of an organic binder system containing one or more of the following substances: molybdenum disulfide, graphite, polytetrafluoroethylene (Teflon PTFE), other types of Teflon, lauric acid, cetyl alcohol, or waxes.

"Space vehicle" means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, mold, jigs, tooling, hardware jackets and test coupons. Also included, auxiliary equipment associated with test, transport and storage that through contamination can compromise the space vehicle performance.

"Specialized function coating" means a coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume

usage. This category excludes coatings covered in other Specialty Coating categories.

"Specialty coating" means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications.

(1) These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

"Temporary protective coating" means a coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

"Thermal control coating" means a coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

"Topcoat" means a coating that is applied over a primer or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

"Wet fastener installation coating" means a primer or sealer applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

"Wing coating" means a corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

R307-355-5. VOC Content Limits.

The owner or operator shall not apply coatings to aerospace vehicles or components with a VOC content greater than the amounts specified in Table 1 unless the owner or operator uses an add-on control device as specified in R307-355-9.

TABLE 1

(Values in grams of VOC per liter of material, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating type	VOC Content Limit (g/l)
Ablative Coating	600
Adhesion Promoter	890
Adhesive Bonding Primers:	
Cured at 250 deg F or below	850
Cured above 250 deg F	1030
Adhesives:	
Commercial Interior Adhesive	760
Cyanoacrylate Adhesive	1,020
Fuel Tank Adhesive	620
Nonstructural Adhesive	360
Rocket Motor Bonding Adhesive	890
Rubber-based Adhesive	850
Structural Autoclavable Adhesive	60
Structural Nonautoclavable Adhesive	850
Antichafe Coating	660
Bearing Coating	620
Caulking and Smoothing Compounds	850
Chemical Agent-Resistant Coating	550
Clear Coating	720
Commercial Exterior Aerodynamic Compatible Substrate Primer	780
Corrosion Prevention Compound	710
Cryogenic Flexible Primer	645
Dry Lubricative Material	880
Cryoprotective Coating	600
Electric or Radiation-Effect Coating	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	800
Elevated-Temperature Skydrol-Resistant Primer	740
Epoxy Polyamide Topcoat	660
Fire-Resistant (interior) Coating	800
Flexible Primer	640
Flight-Test Coatings:	
Missile or Single Use Aircraft	420
All Other	840
Fuel-Tank Coating	720
General Aviation Rework Primer and Topcoat	540
High-Temperature Coating	850
Insulation Covering	740
Intermediate Release Coating	750
Lacquer	830
Maskants:	
Bonding Maskant	1,230
Critical Use and Line Sealer Maskant	1,020
Seal Coat Maskant	1,230
Metalized Epoxy Coating	740
Mold Release	780
Optical Anti-Reflective Coating	750
Part Marking Coating	850
Pretreatment Coating	780
Primer	350
Rain Erosion Resistant Coating	850
Rocket Motor Nozzle Coating	660
Scale Inhibitor	880
Screen Print Ink	840
Sealants:	
Extrudable/Rollable/Brushable Sealant	280
Sprayable Sealant	600
Silicone Insulation Material	850
Solid Film Lubricant	880
Specialized Function Coating	890
Temporary Protective Coating	320
Thermal Control Coating	800
Topcoat	420
Type I chemical milling maskant	622
Type II chemical milling maskants	160
Wet Fastener Installation Coating	675
Wing Coating	850

R307-355-6. Application Method.

(1) No owner or operator shall apply any coating to aerospace vehicles or components unless one of the following application methods is used:

(a) Electrostatic application;

(b) Flow/curtain coat;

(c) Dip/electrodeposition coat;

(d) Roll coat;

(e) Brush coating;

(f) cotton-tipped swab application;

(g) High-Volume, Low-Pressure (HVLP) Spray;

(h) Hand Application Methods; or

(i) Other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods, as determined according to the requirements in 40 CFR 63.750(i).

(2) The following conditions are exempt from R307-355-6(1):

(a) Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces.

(b) The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that cannot be applied by any of the application methods specified in R307-355-6.

(c) The application of coatings that normally have dried film thickness of less than 0.0013 centimeters (0.0005 inches) and that cannot be applied by any of the application methods specified in R307-355-6.

(d) Airbrush application methods for stenciling, lettering, and other identification markings.

(e) Application of specialty coatings.

R307-355-7. Work Practices.

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions from coating and solvent cleaning operations on aerospace vehicles or components. Control techniques and work practices shall

include, but are not limited to:

(a) Storing all VOC-containing coatings, adhesives, thinners, and coating-related waste materials in closed containers, containers with activated carbon, or other control approved by the EPA Administrator;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, adhesives, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials unless a container has an activated carbon or other control approved by the EPA administrator;

(c) Minimizing spills of VOC-containing coatings, adhesives, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, adhesives, thinners, and coating-related waste materials from one location to another in closed container, in pipes, containers with activated carbon, or other control approved by the EPA Administrator.

R307-355-8. Solvent Cleaning.

(1) Hand-wipe cleaning. Cleaning solvents (excluding water and exempt solvents) used in hand-wipe cleaning operations on aerospace vehicles or components shall meet one of the following requirements:

(a) Have a VOC composite vapor pressure less than or equal to 45 mm Hg at 68 degrees Fahrenheit;

(b) Have an aqueous cleaning solvent in which water is at least 80% of the solvent as applied; or

(c) Have a low vapor pressure hydrocarbon-based cleaning solvent.

(2) The following exemptions apply:

(a) Cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen.

(b) Cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine).

(c) Cleaning and surface activation prior to adhesive bonding.

(d) Cleaning of electronics parts and assemblies containing electronics parts.

(e) Cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems.

(f) Cleaning of fuel cells, fuel tanks, and confined spaces.

(g) Surface cleaning of solar cells, coated optics, and thermal control surfaces.

(h) Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft.

(i) Cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

(j) Cleaning of aircraft transparencies, polycarbonate, or glass substrates.

(k) Cleaning and solvent usage associated with research and development, quality control, or laboratory testing.

(l) Cleaning operations, using nonflammable liquids, conducted within five feet of energized electrical systems.

(3) Flush cleaning. Cleaning solvents used in flush cleaning of aerospace vehicle or component parts, assemblies and coating unit components must be emptied into an enclosed container or collection system that is kept closed when not in use.

(4) Spray gun cleaning. All spray guns used to apply coatings to aerospace vehicle or component shall be cleaned by one or more of the following methods:

(a) Enclosed system that is closed at all times except when inserting or removing the spray gun. If leaks in the system are found, repairs shall be made as soon as practicable, but no later than 15 days after the leak was found. If the leak is not repaired by the 15th day, the cleaning solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued.

(b) Nonatomized cleaning.

(i) Spray guns shall be cleaned by placing cleaning solvent in the pressure pot and forcing it through the gun with the atomizing cap in place.

(ii) The cleaning solvent from the spray gun shall be directed into a vat, drum, or other waste container that is closed when not in use.

(c) Disassembled spray gun cleaning.

(i) Spray guns shall be cleaned by disassembling and cleaning the components by hand in a vat, which shall remain closed at all times except when in use.

(ii) Spray gun components shall be soaked in a vat, which shall remain closed during the soaking period and when not inserting or removing components.

(d) Atomizing spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.

(e) Cleaning of the nozzle tips of automated spray equipment systems, except for robotic systems that can be programmed to spray into a closed container, shall be exempt from these requirements.

R307-355-9. Add-On Controls Systems Operations.

If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 85% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-355-10. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-355. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-355.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-355-9.

(i) Key system parameters must include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission

reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

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R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

Note that some definitions are repeated from statute to provide clarity to readers.

"Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

"Biological assessment" means an evaluation of the biological condition of a water body using biological surveys and other direct measurements of composition or condition of the resident living organisms.

"Biological criteria" means numeric values or narrative descriptions that are established to protect the biological condition of the aquatic life inhabiting waters that have been given a certain designated aquatic life use.

"Board" means the Utah Water Quality Board.

"BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

"Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

"CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

"Challenging Party" means a Person who has or is seeking a permit in accordance with Title 19, Chapter 5, the Utah Water Quality Act and chooses to use the independent peer review process to challenge a Proposal as defined in Subsection 19-5-105.3(1)(a).

"COD" means chemical oxygen demand.

"Conflict of Interest" means a Person who has any financial or other interest which has the potential to negatively affect services to the Division or Challenging Party because it could impair the individual's objectivity or it could create an unfair competitive advantage for any Person or organization.

"Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water rules.

"Digested sludge" means sludge in which the volatile solids content has been reduced by at least 38% using a suitable biological treatment process.

"Director" means the Director of the Division of Water Quality.

"Division" means the Utah State Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

"Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

"Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Expert" means a person with technical expertise, knowledge, or skills in a subject matter of relevance to a specific water quality investigation, HISA, or Proposal including persons from other regulatory agencies, academia, or the private sector.

"Human-induced stressor" means perturbations directly or indirectly caused by humans that alter the components, patterns, and/or processes of an ecosystem.

"Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

"Highly Influential Scientific Assessment (HISA)" means a Scientific Assessment developed by the Division or an external Person, that has material relevance to a decision by the Division, and the Director determines could have a significant financial impact on either the public or private sector or is novel, controversial, or precedent-setting, and is not a new or renewed permit issued to a Person.

"Independent Peer Review" means scientific review conducted on request from a Challenging Party in accordance with Section 19-5-105.3 and is a subcategory of Independent Scientific Review.

"Independent Scientific Review" means any technical or scientific review conducted by Experts in an area related to the material being reviewed who were not directly or indirectly involved with the development of the material to be reviewed and who do not have a real or perceived conflict of interest. When an Independent Peer Review is conducted, the conditions in Subsection 19-5-105.3(5) shall apply.

"Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

"Influent" means the total wastewater flow entering a wastewater treatment works.

"Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

"Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Division controls the installation of such systems.

"Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating Permit" is a State issued permit issued to any wastewater treatment works covered under Rules R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection Rule R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program Rule R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) Rule R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project Rule R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems Rule R317-4.

"Person" means any individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Point source" means any discernible, confined and discrete conveyance including but

not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Proposal" means any science-based initiative proposed by the division on or after January 1, 2016, that would financially impact a Challenging Party and that would:

A. change water quality standards;

B. develop or modify total maximum daily load requirements;

C. modify wasteloads or other regulatory requirements for permits; or

D. change rules or other regulatory guidance. A Proposal is not an individual permit issued to a Person, nor is it a technology based limit applied in accordance with Effluent limitations, 33 U.S.C. Sec. 1311, National pollutant discharge elimination system, 33 U.S.C. Sec. 1342, and Information and guidelines, 33 U.S.C. Sec. 1314.

"Regulatory requirements" for permits means the methods or policies used by the Division to derive permit limits such as wasteload analyses, reasonable potential determinations, whole effluent toxicity policy, interim permitting guidance, antidegradation reviews, or Technology Based Nutrient Effluent Limit requirements.

"Scientific Assessment" means an evaluation of a body of credible scientific or technical knowledge that synthesizes scientific literature, data analysis and interpretation, and models, and includes any assumptions used to bridge uncertainties in the available information.

"Scientific basis" means empirical data or other scientific findings, conclusions, or assumptions used as the justification for a rule, regulatory guidance, or a regulatory tool.

"Scientifically necessary to protect the designated beneficial uses of a waterbody" as referenced in Subsection 19-5-105.3(8) means a Technology Based Nutrient Effluent Limit that under current and future growth projections, will:

A. prevent circumstances that would cause or contribute to an impairment of any designated or existing use in the receiving water or downstream water bodies based on Utah's water quality standards, Section R317-2-7; or

B. improve water quality conditions that are causing or contributing to any existing impairment in the receiving water or downstream water bodies, as defined by Utah's water quality standards, Section R317-2-7.

"Sewage" is synonymous with the term "domestic wastewater".

"Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

"Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

"SS" means suspended solids.

"Technology Based Nutrient Effluent Limit" means maximum nutrient limitations based on the availability of technology to achieve the limitations, rather than based on a water quality standard or a total maximum daily load.

Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

"Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

"TSS" means total suspended solids.

"Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

"Use Attainability Analysis" means a structured Scientific Assessment of the factors affecting the attainment of the uses specified in Section R317-2-6. The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria as described in 40 CFR 131.10(g) (1-6).

"Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

"Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

"Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

"Water Quality Based Effluent Limit (WQBEL)" means an effluent limitation that has been determined necessary to ensure that water quality standards in a receiving body of water will not be violated.

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these rules.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers) without first receiving a permit to do so from the Director or its authorized representative, except as provided herein.

A. Body Politic Required. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

B. Submission of Plans. Any person desiring a permit shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Director for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet of less

and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

C. Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these rules.

D. Approval of Plans. Issuance of a construction permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes.

E. Permit Expiration. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

F. Exceptions.

1. Wastewater facilities that discharge to an existing sewer system and serve only units that are under single ownership, or serve multiple units under separate ownership where the wastewater facilities are under the sponsorship of the public sewer system to which they discharge. This exception does not apply to pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day).

2. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with rules for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the rules shall be determined by an on-site inspection by the appropriate health authority.

3. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.3 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these rules and under circumstances which assure compliance with water quality standards in R317-2.

2.4 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these rules and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of Rule R317-2 Water Quality Standards, except that the Director may waive compliance with these requirements for specific criteria listed in Rule R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Director.

3.2 Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/L nor shall the arithmetic mean exceed 30 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 mL or 200 per 100 mL respectively, nor shall the geometric mean exceed 2500 per 100 mL or 250 per 100 mL respectively, during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 mL nor shall the geometric mean exceed 158 per 100 mL respectively during any 7-day period. Exceptions to this requirement may be allowed by the Director where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Director may allow exceptions to the requirements of Subsections R317-1-3.2.A, R317-1-3.2.B, and R317-1-3.2.D where the discharge will be of short duration and where there will be no significant detrimental effect on receiving water quality or downstream beneficial uses.

G. The Director may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/L for a monthly average nor 65 mg/L for a weekly average provided the following criteria are met:

1. the lagoon system is operating within the organic and

hydraulic design capacity established by Rule R317-3;

2. the lagoon system is being properly operated and maintained;

3. the treatment system is meeting all other permit limits;

4. there are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Director that the IU is not contributing constituents in concentrations or quantities likely to significantly affect the treatment works; and

5. a Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Technology-based Limits for Controlling Phosphorus Pollution.

A. Technology-based Phosphorus Effluent Limits (TBPEL)

1. All non-lagoon treatment works discharging wastewater to surface waters of the state shall provide treatment processes which will produce effluent less than or equal to an annual mean of 1.0 mg/L for total phosphorus.

2. The TBPEL shall be achieved by January 1, 2020, or no later than January 1, 2025, after a variance has been granted under Subsection R317-1-3.3.C.1.e.

B. Discharging Lagoons -Phosphorus Loading Cap

1. No TBPEL will be instituted for discharging treatment lagoons. Instead, each discharging lagoon will be evaluated to determine the current annual average total phosphorus load measured in pounds per year based on monthly average flow rates and concentrations. Absent field data to determine these loads, and in case of intermittent discharging lagoons, the phosphorus load cap will be estimated by the Director.

2. A cap of 125% of the current annual total phosphorus load will be established and referred to as phosphorus loading cap. Once the lagoon's phosphorus loading cap has been reached, the owner of the facility will have five years to construct treatment processes or implement treatment alternatives to prevent the total phosphorus loading cap from being exceeded.

3. The load cap shall become effective July 1, 2018.

C. Variances for TBPEL and Phosphorus Loading Caps

1. The Director may authorize a variance to the TBPEL or phosphorus loading cap under any of the following conditions:

a. Where an existing TMDL has allocated a total phosphorus wasteload to a treatment works, no TBPEL or phosphorus loading cap, as applicable, will be applied.

b. If the owner of a discharging treatment works can demonstrate that imposing the TBPEL or phosphorus loading cap would result in an economic hardship, an alternative TBPEL or phosphorus loading cap that would not cause economic hardship may be applied. "Economic hardship" for a publicly owned treatment works is defined as sewer service costs that, as a result of implementing a TBPEL or phosphorus loading cap, would be greater than 1.4% of the median adjusted gross household income of the service area based on the latest information compiled by the Utah State Tax Commission, after inclusion of grants, loans, or other funding made available by the Utah Water Quality Board or other sources. The Director will consider other demonstrations of economic hardship on a case-by-case basis.

c. If the owner of a discharging treatment works can demonstrate that the TBPEL or phosphorus loading cap are clearly unnecessary to protect waters downstream from the point of discharge, no TBPEL or phosphorus loading cap will be applied.

d. If the owner of the discharging treatment works can demonstrate that a commensurate phosphorus reduction can be achieved in receiving waters using innovative alternative approaches such as water quality trading, seasonal offsets, effluent reuse, or land application.

e. Where the owner of a non-lagoon discharging treatment works demonstrates due diligence toward construction of a treatment facility designed to meet the TBPEL, the compliance date shall be no later than January 1, 2025.

2. All variances to TBPEL and phosphorus loading caps shall be revisited no more frequently than every five years, or when a substantive change in facility operations or a substantive facility upgrade occurs, to determine if the rationale used to justify the conditions in Subsection R317-1-3.3.C remains applicable.

3. For treatment works required to implement TBPEL or a phosphorus loading cap, the demonstration under Subsection R317-1-3.3.C must be made by January 1, 2018. Unless this demonstration is made, the owner of the discharging treatment works must proceed to implement the TBPEL or phosphorus loading cap, as applicable, in accordance with, respectively, Subsections R317-1-3.3.A and R317-1-3.3.B.

D. Facility Optimization to Remove Total Inorganic Nitrogen

1. If the owner of a discharging treatment works agrees to optimize the owner's facility, either through operational changes, a capital construction project, or both, to reduce effluent total inorganic nitrogen concentrations to a level agreeable to the Director, a waiver of up to ten years from meeting either water quality-based effluent limits or technology-based effluent limits for total inorganic nitrogen will be granted. This includes meeting any total inorganic nitrogen limit that may result from a TMDL or other water quality study that is specific to the receiving water of the treatment works.

2. The waiver period under this section would begin upon implementation of the optimization improvements or another date agreed to by the owner of the treatment works and the Director.

3. The elements of the waiver under this section will be identified in a compliance agreement that will be incorporated into the facility's UPDES permit.

4. The waiver identified under this section must be granted before January 1, 2020. Thereafter, no such waiver will be considered or granted.

E. Monitoring

1. All discharging treatment works are required to implement, at a minimum, monthly monitoring of:

a. influent for total phosphorus (as P) and total Kjeldahl nitrogen (as N) concentrations; and

b. effluent for total phosphorus and orthophosphate (as P), and ammonia, nitrate-nitrite, and total Kjeldahl nitrogen (as N).

2. The Director may authorize a variance to the monitoring requirements identified in Subsection R317-1-3.3.D.1.

3. All monitoring under Subsection R317-1-3.3.D shall be based on 24-hour composite samples by use of an automatic sampler or by combining a minimum of four grab samples collected at least two hours apart within a 24-hour period.

4. These monitoring requirements shall be self-implementing beginning July 1, 2015.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the

pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these rules shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Director as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Director based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Middle Bear River -- February 23, 2010
7.2 Chalk Creek -- December 23, 1997
7.3 Otter Creek -- December 23, 1997
7.4 Little Bear River -- May 23, 2000
7.5 Mantua Reservoir -- May 23, 2000
7.6 East Canyon Creek -- September 14, 2010
7.7 East Canyon Reservoir -- September 14, 2010
7.8 Kents Lake -- September 1, 2000
7.9 LaBaron Reservoir -- September 1, 2000
7.10 Minersville Reservoir -- September 1, 2000
7.11 Puffer Lake -- September 1, 2000
7.12 Scofield Reservoir -- September 1, 2000
7.13 Onion Creek (near Moab) -- July 25, 2002
7.14 Cottonwood Wash -- September 9, 2002
7.15 Deer Creek Reservoir -- September 9, 2002
7.16 Hyrum Reservoir -- September 9, 2002
7.17 Little Cottonwood Creek -- September 9, 2002
7.18 Lower Bear River -- September 9, 2002
7.19 Malad River -- September 9, 2002
7.20 Mill Creek (near Moab) -- September 9, 2002
7.21 Spring Creek -- September 9, 2002
7.22 Forsyth Reservoir -- September 27, 2002
7.23 Johnson Valley Reservoir -- September 27, 2002
7.24 Lower Fremont River -- September 27, 2002
7.25 Mill Meadow Reservoir -- September 27, 2002
7.26 UM Creek -- September 27, 2002
7.27 Upper Fremont River -- September 27, 2002
7.28 Deep Creek -- October 9, 2002
7.29 Uinta River -- October 9, 2002
7.30 Pineview Reservoir -- December 9, 2002
7.31 Browne Lake -- February 19, 2003
7.32 San Pitch River -- November 18, 2003
7.33 Newton Creek -- June 24, 2004
7.34 Panguitch Lake -- June 24, 2004
7.35 West Colorado -- August 4, 2004
7.36 Silver Creek -- August 4, 2004
7.37 Upper Sevier River -- August 4, 2004
7.38 Lower and Middle Sevier River -- August 17,2004
7.39 Lower Colorado River -- September 20, 2004
7.40 Upper Bear River -- August 4, 2006
7.41 Echo Creek -- August 4, 2006
7.42 Soldier Creek -- August 4, 2006
7.43 East Fork Sevier River -- August 4, 2006
7.44 Koosharem Reservoir -- August 4, 2006
7.45 Lower Box Creek Reservoir -- August 4, 2006
7.46 Otter Creek Reservoir -- August 4, 2006
7.47 Thistle Creek -- July 9, 2007
7.48 Strawberry Reservoir -- July 9, 2007
7.49 Matt Warner Reservoir -- July 9, 2007
7.50 Calder Reservoir -- July 9, 2007
7.51 Lower Duchesne River -- July 9, 2007
7.52 Lake Fork River -- July 9, 2007
7.53 Brough Reservoir -- August 22, 2008
7.54 Steinaker Reservoir -- August 22, 2008
7.55 Red Fleet Reservoir -- August 22, 2008
7.56 Newcastle Reservoir -- August 22, 2008
7.57 Cutler Reservoir -- February 23, 2010
7.58 Pariette Draw -- September 28, 2010
7.59 Emigration Creek -- September 1, 2011
7.60 Jordan River -- June 27, 2012
7.61 Colorado River -- December 5, 2013
7.62 Echo Reservoir -- March 26, 2014
7.63 Rockport Reservoir -- March 26, 2014
7.64 Nine Mile Creek -- October 27, 2016

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the

UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - $7,000 to $10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - $2,000 to $7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to $500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

8.6 Expedited Settlement Offer (ESO). Only enforcement cases classified as Category C or Category D violations may qualify for an ESO in lieu of the penalty process found in Subsection R317-1-8.3 Penalty Calculation Methodology. Except in cases where recidivism has been established by a pattern of non-compliance, an ESO may be used when violations are readily identifiable, readily correctable, and do not cause significant harm to human health or the environment.

A. A violator is not compelled to sign an ESO. If the violator does not sign the ESO, then the penalty will be recalculated according to Subsection R317-1-8.3.

B. The violator has 30 days total from receipt of the

ESO to sign and return the ESO to the division. If the violator signs the ESO, then the violator must comply with its conditions within 15 days after receipt of the final ESO signed by the director, or as otherwise designated in the ESO. If the violator signs the ESO they agree to waive:

1. the right to contest the findings and specified penalty amount;

2. the opportunity for an administrative hearing pursuant to Section 19-1-301; and

3. the opportunity for judicial review.

C. Deficiency Form. A deficiency form is used to list the violations and corresponding penalties. Multiple violations at a site are totaled providing a final penalty commensurate with the extent of non-compliance. Penalties developed for the list of program violations on the deficiency form should be estimated at about 60% of the penalty as calculated in Subsection R317-1-8.3.

R317-1-9. Electronic Submissions and Electronic Signatures.

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Director to ensures that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

R317-1-10. Independent Scientific Review.

10.1 Applicability.

A. Independent Scientific Review may be used to solicit formal evaluations from outside Experts on the strengths and weaknesses of the scientific basis used to support any new Division Proposal or Highly Influential Scientific Assessment (HISA).

B. Independent Peer Reviews for permits shall be limited to modifications to wasteloads used in UPDES discharge permits, or the scientific basis of any other modification to a regulatory requirement used in developing permit limits. Review of individual permits shall follow existing adjudicative processes that govern their issuance or renewal in accordance with Subsection 19-5-105.3(1)(c)(iii).

C. The Director shall initiate an Independent Scientific Review when one of the following conditions is met:

1. A Challenging Party requests an Independent Peer Review on the scientific basis of a Division Proposal under Section 19-5-105.3 and provides the information described in Subsection R317-1-10.3.C.

2. The Director makes a determination that a new Scientific Assessment is a Highly Influential Scientific Assessment (HISA) and that sufficient resources are available to support an Independent Scientific Review.

D. Implementing an Independent Scientific Review or an Independent Peer Review does not affect any applicable public comment or public hearing requirements for any Proposal or other action considered during such a review. If a proposal or other action that is subject to a public comment or public hearing requirement is changed after a comment period has begun or hearing has been held, DEQ shall provide a new opportunity for comment or a new hearing, as appropriate. See also Subsection R317-1-10.4.D.

10.2 Independent Scientific Review process.

A. Independent Scientific Reviews shall be conducted in general accordance with the guidance contained in the United States Environmental Protection Agency's Science and Technology Policy Council Peer Review Handbook 4th Edition.

B. Independent Scientific Reviews shall entail development of a scope of work for review; selection of independent Experts; management of the Independent Scientific Reviews; submission by Experts of findings and recommendations; development of a Division response to review findings; finalization of the Proposal or HISA; and publication for public comment.

1. The Director shall prepare a scope of work that defines the objectives of an Independent Scientific Review and provide instructions for the Experts. The Director shall also prepare a schedule for the review. In the case of an Independent Peer Review the Director will seek and incorporate input from the Challenging Party into the development of the scope of work.

a. The scope of work shall include several components:

i. A summary of the Proposal or HISA under consideration and reasons for the review.

ii. The specific charge questions that articulate the issues, areas of concern, or advice sought through the Independent Scientific Review process. Charge questions shall generally focus on the degree of confidence, certainty, and major data gaps with respect to the interpretation or application of the scientific basis of a proposed rule, regulatory guidance, or regulatory tool.

iii. A compilation of data, reports or other scientific information that has a material influence on the scientific basis of the Proposal or HISA under review.

iv. A statement of qualifications and expertise required for Experts that will be considered in conducting the Independent Scientific Review.

v. Other important instructions to Experts such as reporting expectations or communication protocols.

vi. A schedule for accomplishing the review.

b. The scope of work shall be made available for public comment for a minimum of 30 days and no more than 60 days to help identify missing data or missing elements of the charge questions. In the event of a condition which poses hazard to human health or the environment that may increase significantly during a review period, a shorter period may be specified. The Director shall prepare a response to any comments that are received and shall refine the scope of work, as appropriate, before sending the scope of work to the Experts.

2. The Director shall select Experts to conduct Independent Scientific Reviews using the following criteria:

a. Experts shall be selected who have demonstrated expertise in scientific disciplines that are relevant to the scientific basis of the Proposal or HISA.

b. Experts shall not have a conflict of interest that could jeopardize their objectivity or impartiality.

c. An Independent Scientific Review shall be conducted by at least three independent Experts. Additional Experts may be asked to conduct reviews, as needed, to fairly reflect the breadth of scientific perspectives or fields of knowledge related to the scientific basis under review. If the Independent Scientific Review is an Independent Peer Review, the conditions in Section 19-5-105.3 shall apply.

3. Management of Independent Scientific Reviews.

a. Management of Independent Scientific Reviews may be conducted by any of the following:

i. the Division;

ii. the United States Environmental Protection Agency;

iii. an independent contractor; or,

iv. an independent organization such as an editorial board of a relevant scientific journal, appropriate trade organization, or other research institute.

b. From the time they accept the invitation to participate in an Independent Scientific Review, Experts should avoid interaction with the Division, a challenging party, the general public or others that might create a real or perceived Conflict of Interest regarding the Proposal under review to ensure that Expert findings are independent and objective.

4. Compilation of Expert Findings.

a. Each Expert shall submit written comments that include responses to the charge questions and an evaluation of the scientific basis of the Proposal or HISA.

b. The Director shall charge Experts to identify in their written comments any areas of scientific uncertainty or major data gaps that have a reasonable likelihood of altering material provisions of a Proposal or HISA, including descriptions of the nature of the uncertainty, estimates of the relative extent of this uncertainty, and any recommendations for resolving areas of uncertainty.

10.3 Special provisions for Independent Peer Reviews conducted in accordance with Section 19-5-105.3.

A. On request from a Challenging Party, the Director shall conduct an Independent Peer Review of the scientific basis of a Proposal made by the Division on or after January 1, 2016, provided that the following conditions are met:

1. A Challenging Party requests the review, in writing, during the public comment period on a Proposal.

2. The Challenging Party agrees to fund the Independent Peer Review.

3. The Challenging Party provides the information described in Subsection R317-1-10.3.C.

4. The Challenging Party would be substantially impacted by the adoption of the Proposal.

B. Funding Independent Peer Reviews.

1. Costs associated with the peer reviews will be incurred by the Division and billed to the Challenging Party and may include management of the peer review process by an independent contractor agreed to by the Director and Challenging Party, honorariums provided to Experts to conduct the reviews, and expenses incurred by the Experts.

2. An estimate of projected costs for conducting an Independent Peer Review, including expenses identified in Subsection R317-1-10.3.B.1, shall be estimated by the Director and provided to the Challenging Party prior to finalization of contracts or other financial agreements with Experts.

3. If there is more than one Challenging Party to the scientific basis of a Proposal, the challenges will be consolidated for the Independent Peer Review. Those requesting the review will be responsible for the costs of the review and allocation of costs between parties.

C. The written request for an Independent Peer Review from a Challenging Party shall be included in the final scope of work and shall include the following as best determined by the Challenging Party:

1. An explanation of the specific scientific elements of the Proposal that the Challenging Party questions and an explanation of why these elements may not be scientifically defensible.

2. If the challenge involves review of whether a Technology Based Nutrient Effluent Limit is scientifically necessary, the Challenging Party should include an explanation of why the limits are or are not necessary, including consideration of:

a. all designated beneficial uses of the receiving water and the uses of downstream, hydrologically connected water bodies;

b. current conditions and projected future conditions with respect to wastewater effluent and receiving water quantity and quality; and

c. any other nutrient sources under current and projected future conditions that it is reasonable to believe may affect the same receiving water and downstream hydrologically connected water bodies.

3. Access to sources of data, reports or other information that can be used to establish a scientific basis to the challenge that the Challenging Party would like to be included as supporting materials in the scope of work.

4. Recommendations for qualified independent Experts, who do not have a conflict of interest and whom the Challenging Party would support as Experts based on their documented expertise in areas of relevance to the technical basis of the Proposal being challenged.

D. The Independent Scientific Review process specified in Subsection R317-1-10.2 shall be followed for Independent Peer Reviews conducted at the behest of a Challenging Party with the exception of several limitations outlined in this subsection that are needed to maintain consistency with Section 19-5-105.3.

1. An Independent Peer Review panel shall consist of at least three Experts who do not have direct association with the Division or Challenging Party in accordance with Subsection 19-5-105.3(1)(b)(iii)and shall be selected by both the Division and Challenging Party as described in Subsection 19-5-105.3(5).

2. The Director shall designate one member of the Independent Peer Review Panel to serve as a chair to develop and oversee the preparation of a final synthesis report. In the event that Experts are selected through Subsection 19-5-105.3(5)(c), then the mutually agreed upon member shall serve as the Independent Peer Review Panel chair.

3. Management of the Independent Peer Review process shall be conducted by an independent contractor, who does not have a conflict of interest with the Division or the Challenging Party.

4. Management responsibilities of Independent Peer Reviews include the following:

a. Estimation of appropriate honorariums for the Experts to complete their individual written reviews with consideration for the breadth of the review identified in the scope of work and volume of supporting materials including additional compensation for the Independent Peer Review Panel chair for overseeing and writing a final written report as described in Subsection R317-1-10.3.D.5.

b. Development of a work timeline and interim progress tracking to ensure timely completion of the Independent Peer Review process.

c. Development and oversight of contracts or other financial agreements with Experts or others identified as integral to the review process.

d. Facilitation of necessary communication among the Division, Challenging Party and Experts throughout the

review process, in a way that ensures all parties have access to any additional information, such as clarification to charge questions or charge questions that were not considered in development of the scope of work.

e. Regular progress updates to the Division and Challenging Party.

5. The Director shall charge the Independent Peer Review panel chair with development of a final written report, which:

a. is written by the chair after written independent reviews have been submitted by each Expert;

b. is reviewed by all members of the Independent Peer Review panel;

c. documents areas of consensus and dissention among Experts on elements of the scientific basis of the Proposal that Experts believe to have material influence of the Proposal under review;

d. provides a final recommendation from the Independent Peer Review panel on the scientific defensibility of the Division's Proposal, as specified in Subsection 19-5-105.3(7);

e. includes a determination of scientific necessity for any review that involves an evaluation of the application of a Technology Based Nutrient Effluent Limit; and

f. includes the Experts' written findings of the underlying rationale for making a determination that any element of the scientific basis of a Proposal is not scientifically defensible or is scientifically defensible with conditions, and any applicable and reasonable conditions to remedy their concerns.

E. To avoid inordinate delays in rulemaking or other regulatory decisions, Independent Peer Reviews must be completed within one year following appointment of the Independent Peer Review panel.

10.4 Use of Independent Scientific Review results.

A. The Director shall incorporate as needed recommendations and findings from the Experts in the finalization of the Proposal or HISA under review.

B. The Director shall document how the findings of the Experts were applied to the Proposal or HISA.

C. All materials associated with any review process shall be made available during the public comment period applicable to the HISA or Proposal under review, including:

1. the scope of work used to conduct the peer review;

2. the written independent findings from individual Experts;

3. summary reports that were developed after individual Expert reviews were submitted, if appropriate; and

4. the final decision of the Director and rationale for any modifications to the original agency Proposal or HISA in response to Independent Scientific Review findings and recommendations.

D. In the event that the Proposal or HISA under review does not have an established public comment process that occurs after the Independent Scientific Review Process, the Director shall make peer review material available for public comment for a minimum of 30-days and shall consider all substantive public comments prior to finalization of the Proposal or HISA.

E. The Director shall prepare a responsiveness summary that includes:

1. all substantive public comments related to the Independent Scientific Review,

2. the Director's response to public comments, and

3. any changes to the Proposal or HISA that were made in response to public comments.

F. Incorporation of the Director's decisions into existing Division processes.

1. If the Expert findings result in a decision by the Director to modify any element of any UPDES permit, this decision will be summarized in the Statement of Basis on the next issuance of the permit and all Independent Peer Review materials shall be made available as supporting documentation when the permit is published for public comment. If the Proposal is a wasteload or other regulatory requirements for a permit the results shall be incorporated into the proposed permit on which the wasteload is based.

2. If the Proposal under review is regarding the application of a Technology Based Nutrient Effluent Limit and the Independent Peer Review panel determines that the limit is not scientifically necessary, then this finding shall be included in the Statement of Basis in the new or renewed permit as a justification for not including Technology Based Nutrient Effluent Limits that would otherwise have been required. All materials associated with the Independent Peer Review shall be made available during the public comment period for this permit as support for this determination.

3. The decision to modify any permit element, based upon the results of an Independent Scientific Review, is not final until the permit is actually issued.

4. The decision to modify a rule, based upon the results of an Independent Scientific Review, is not final until the rule is actually modified.

KEY: expedited, negotiations, penalty, settlement
January 1, 2018 19-5
Notice of Continuation August 30, 2017

R337. Financial Institutions, Credit Unions.
R337-4. Establishment of "Credit Union Service Organizations".
R337-4-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(15) and 7-1-505 and construes and applies to Sections 7-9-5(21) and 7-9-5(34).

(2) This rule applies to all state-chartered credit unions.

(3) The purpose of this rule is to define "credit union service organizations", outline the procedures and requirements for establishing these organizations, and establish rules governing the affairs of the organizations.

R337-4-2. Definitions.

(1) "Capital and surplus" means shares, deposits, reserves, and undivided earnings.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Credit union service organization" means an organization owned by one or more credit unions which provides any of the following services:

(a) Checking and currency services:

(i) Check cashing;

(ii) Coin and currency services, and

(iii)Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services;

(b) Clerical, professional and management services:

(i) Accounting services;

(ii) Courier services;

(iii)Credit analysis;

(iv) Facsimile transmissions and copying services;

(v) Internal audits for credit unions;

(vi) Locator services;

(vii)Management and personnel training and support;

(viii)Marketing services;

(ix)Research services; and

(X) Supervisory committee audits;

(c) Consumer mortgage loan origination;

(d) Electronic transaction services;

(i) Automated teller machines (ATM) services;

(ii) Credit card and debit card services;

(iii)Data processing;

(iv) Electronic fund transfer (EFT) services;

(v) Electronic income tax filing;

(vi) Payment item processing;

(vii)Wire transfer services; and

(viii)Cyber financial services;

(e) Financial counseling services:

(i) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;

(ii) Estate planning;

(iii)Financial planning and counseling;

(iv) Income tax preparation;

(v) Investment counseling; and

(vi) Retirement counseling;

(f) Fixed asset services:

(i) Management, development, sale, or lease of fixed assets; and

(ii) Sale, lease, or servicing of computer hardware or software;

(g) Insurance brokerage or agency:

(i) Agency for sale of insurance;

(ii) Provision of vehicle warranty programs; and

(iii) Provision of group purchasing programs;

(h) Leasing:

(i) Personal property; and

(ii) Real estate leasing of excess credit union service organization property;

(i) Loan support services:

(i) Debt collection services;

(ii) Loan processing, servicing, and sales; and

(iii)Sale of repossessed collateral;

(j) Loans and extensions of credit;

(k) Member business loans;

(l) Record retention, security and disaster recovery services:

(i) Alarm-monitoring and other security services;

(ii) Disaster recovery services;

(iii)Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;

(iv) Provision of forms and supplies; and

(v) Record retention and storage;

(m) Securities brokerage services;

(n) Shared credit union branch (service center) operations;

(o) Student loan origination;

(p) Travel agency services;

(q) Trust and trust-related services:

(i) Acting as administrator for prepaid legal service plans;

(ii) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity;

(iii)Trust services; and

(r) credit union service organization investments in non-credit union service organization service providers: In connection with providing a permissible service, a credit union service organization may invest in a non-credit union service organization service provider. The amount of the credit union service organization's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

(4) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a member, that is made on the basis of any obligation of that member to repay the funds, or repayable from specific property pledged by or on behalf of a member. "Loans and extensions of credit" includes:

(a) A contractual commitment to advance funds;

(b) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a member may be liable as maker, drawer, endorser, guarantor, or surety;

(c) A participation without recourse, with regard to the participating credit union service organization.

(5) "Loans and extensions of credit" does not include:

(a) An endorsement or guarantee for the protection of a credit union and credit union service organization of any loan or other asset previously acquired by the credit union service organization in good faith or any indebtedness to a credit union and the credit union service organization for the purpose of protecting the credit union and the credit union service organization against loss or of giving financial assistance to it;

(b) The purchase of investment grade securities subject to a repurchase agreement in which the purchasing credit union has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(c) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(6) "Member" means a member of a stockholder credit union.

(7) "Participation" means the purchase or sale by a lender of a loan or part of a loan under circumstances in

which the acquiring institution;

(a) Has no formal or direct role in establishing the terms and conditions binding the borrower; or

(b) is not a signatory of the loan agreement binding the borrower.

(8) "Participation agreement" means an agreement between the lead financial institution and the participant financial institution spelling out in detail the terms, conditions, and understandings between the parties to a loan participation.

(9) "Recourse" means an oral or written agreement whereby a selling institution of a loan or participation in a loan agrees to repurchase in whole or in part upon request of the purchaser or the seller.

(10) "Well capitalized" means "well capitalized" as defined in 12 U.S.C. Sec. 1790d(c)(1).

R337-4-3. Establishment and Approval of a Credit Union Service Organization.

(1) A credit union by action of its board of directors may establish or invest in, or both, a credit union service organization authorized to engage in the services specified in this rule if:

(a) The credit union has capital and surplus of $500,000 or more and;

(b) The credit union meets the net worth classification of "well capitalized".

(2) The total investments in, or loans to all service organizations shall not exceed 5% of the capital and surplus of the credit union.

(3) The services performed by the credit union service organization are limited primarily to stockholder credit unions and their members or members of credit unions contracting with the credit union service organization. However, for member business loans and loans and extensions of credit, the credit union service organization shall only serve members.

(4) To establish a credit union service organization, a credit union shall file an application with the commissioner identifying the services the credit union service organization will provide.

The application shall contain pro forma statements or other information sufficient to determine:

(a) The benefits the credit union service organization will create for the credit union or its members; and

(b) That the investment will not represent an unreasonable risk to the safety and soundness of the credit union.

(5) The commissioner shall approve or disapprove the application within 30 days after accepting it as complete. If the commissioner does not approve or disapprove an application within this time, it is considered approved. A credit union service organization approved prior to the effective date of the 2002 rule change need not reapply for authorization.

(6) A credit union may not change the type of services engaged in by the credit union service organization or engage in new services without providing 30 days written notice to the commissioner.

(7) The commissioner may at any time, based upon supervisory, legal, or safety and soundness reasons, limit the services engaged in by the credit union service organization.

(8) The credit union service organization shall comply with all relevant and applicable state and local laws and ordinances for the specific services offered.

(9) A credit union may establish or invest in, or both, a credit union service organization to provide services not set forth in this rule upon approval of the commissioner obtained pursuant to R337-4-3(4) and (5).

(10) A credit union service organization may provide services not set forth in this rule upon approval of the commissioner obtained pursuant to R337-4-3(4) and (5).

R337-4-4. Examination of Credit Union Service Organizations by Commissioner or Supervisor.

(1) The commissioner or the supervisor of credit unions shall visit and examine, or cause to be visited and examined, every credit union service organization as the commissioner considers necessary or advisable.

(2) At every examination of a credit union service organization, careful inquiry shall be made as to:

(a) the condition and resources of the credit union service organization examined;

(b) the mode of conducting and managing its affairs;

(c) the actions of its directors and officers;

(d) the investment and disposition of its funds;

(e) whether or not it is violating any provision of law relating to the credit union service organization or the business of the credit union service organization examined;

(f) whether or not it is complying with its articles of incorporation and bylaws; and

(g) such other matters as the commissioner may prescribe.

(3) The commissioner may, in the commissioner's discretion, accept examinations of any credit union service organization which are made by federal examiners or examiners from other states having jurisdiction over that credit union service organization in lieu of any examination required under the laws of this state.

R337-4-5. Prohibited Member Business Loans.

A credit union service organization may not extend a member business loan to the following individuals of the credit union service organization or credit unions which invest in or lend to the credit union service organization; or in entities in which these persons have control:

(1) board members;

(2) executive officers; and

(3) appointed committee members.

R337-4-6. Written Member Business Loan Policies.

A credit union service organization offering member business loans shall adopt specific written loan policies and review them at least annually. The credit union service organization shall establish written credit policies, loan security requirements, loan investment, personnel, and collection policies. At a minimum, the policies shall address the following:

(1) the types of member business loans to be made;

(2) the qualification and experience of personnel (minimum of two (2) years) involved in making and administering member business loans;

(3) a requirement to analyze and document the ability of a borrower to repay the loan;

(4) receipt and periodic updating of financial statements and other documentation, including tax returns;

(5) a requirement for sufficient documentation supporting each request to extend credit, or increase an existing loan or line of credit (except where the credit union service organization finds that the documentation requirements are not generally available for a particular type of member business loan and states the reasons for those findings in the credit union's written policies). At a minimum, the documentation shall include the following:

(a) balance sheet;

(b) cash flow analysis;

(c) income statement;

(d) tax data;

(e) analysis of leveraging; and

(f) comparison with industry average or similar analysis;
(6) the collateral requirements shall include:
(a) loan-to-value ratios;
(b) determination of value;
(c) determination of ownership;
(d) steps to secure various types of collateral; and
(e) how often the credit union service organization will reevaluate the value and marketability of collateral;
(7) the interest rates and maturities of member business loans; and
(8) general loan procedures which include:
(a) loan monitoring;
(b) servicing and follow-up; and
(c) collection.

R337-4-7. Allowance Account for Loan Losses.

A credit union service organization that makes member business loans is required to establish and maintain an allowance account for loan losses as set forth in Rule R337-5-3.

R337-4-8. Purchase and Sale of Loans and Participations in Loans.

(1) A credit union service organization shall have authority to make loan participation arrangements with other credit unions, credit union service organizations, or financial organizations in accordance with its written policies, if the credit union service organization that originates a loan for which participation arrangements are made retains an interest of at least 10% of the loan.

(2) A credit union service organization shall comply with Rule R331-12.

(3) The limitations set forth in Section 7-9-20(7)(f) apply to loan participations purchased or sold by a credit union service organization.

R337-4-9. Loan Limitations.

(1) The individual and aggregate loan limitations set forth in Section 7-9-20 shall apply to all loans and extensions of credit and member business loans made by a credit union and its wholly owned credit union service organization as if they were one entity.

(a) A credit union service organization may extend a member business loan to a person if the person is a business entity, and at least one individual having a controlling interest in that business entity has been a member of the credit union for at least six months prior to the date of the extension of the member business loan; or

(b) A credit union service organization may extend a member business loan to a person if the person is an individual, and the individual is a member of the credit union for at least six months prior to the date of the extension of the member business loan.

(2) The individual and aggregate loan limitations for a credit union service organization that is a non wholly owned subsidiary of a credit union shall be the same as set forth in Section 7-9-20. The limitation shall be determined by allocating loans made by the non wholly owned credit union service organization to its member credit unions on a pro-rata ownership basis.

(a) A credit union service organization that is a non wholly owned subsidiary of a credit union may extend a member business loan to a person if the person is a business entity, and at least one or more of the individuals having a controlling interest in that business entity has been a member of each of the credit unions participating in the credit union service organization for at least six months prior to the date of the extension of the member business loan; or

(b) A credit union service organization that is a non wholly owned subsidiary of a credit union may extend a member business loan to a person if the person is an individual, and the individual is a member of each of the credit unions participating in the credit union service organization for at least six months prior to the date of the extension of the member business loan.

(3) Loan limitations shall be determined using the last quarterly report of condition filed with the Department.

R337-4-10. Trust Business.

(1) Only a credit union service organization that is a wholly owned subsidiary of a single credit union may seek authorization to become a trust company and engage in trust business in this state. A wholly owned credit union service organization seeking to become a trust company shall file an application as provided in Section 7-5-3 with the commissioner in the manner provided in Section 7-1-704, and shall pay the fee prescribed in Section 7-1-401(6).

(2) In addition to the criteria set forth in Section 7-5-3(2) the wholly owned credit union service organization shall have and maintain a minimum capital level of two million dollars ($2,000,000). Capital shall be determined in accordance with Generally Accepted Accounting Principles (GAAP).

(3) Wholly owned credit union service organizations authorized to engage in trust business in this state shall comply with the requirements of Section 7-5-1 et. al.

(4) The safety and soundness examination of a wholly owned credit union service organization engaged in trust business may be performed in conjunction with the safety and soundness examination of the credit union. A trust examination fee shall be assessed in accordance with Section 7-1-401(2).

(5) Any loss, liability or contingent liability of a wholly owned credit union service organization operating as a trust company shall be offset first against the capital of the wholly owned credit union service organization and then against the capital of the credit union.

(6) A wholly owned credit union service organization that engages in trust business shall maintain its books according to GAAP. A wholly owned credit union service organization that engages in trust business shall annually make or cause to be made an audit of the credit union service organization's books by a licensed certified public accountant.

KEY: credit unions
October 4, 2002 7-1-301(3)(a)
Notice of Continuation December 12, 2017 7-9-5(34)

R357. Governor, Economic Development.
R357-5. Motion Picture Incentive.
R357-5-1. Authority.

(1) Subsection 63N-8-104(1) requires the office to make rules establishing the standards that a motion picture company, and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive.

R357-5-2. Definitions.

(1) The definitions below are in addition to or serve to clarify the definitions found in Utah Code Section 63N-8-102.

(2) "Community Film Incentive Program" means a production where a motion picture company has a maximum budget of under $500,000.

(3) "Dollars Left in the State" means in addition to 63N-8 does NOT include:

(a) Salary for any individual earning more than 500,000

(b) Marketing and distributions expenditures

(c) 50% of shipping or airfare charges with one destination point within Utah and all shipping or airfare outside of Utah

(d) any value beyond the depreciated amount for capital expenditures, rentals, and any purchases made where the item is used for only a portion of its useful life

(e) any per diem value beyond 120 percent of the current federal rate for the area

(4) "Independent Utah CPA" means, a Certified Public Accountant (CPA) holding an active license in the state of Utah that is independent of the production and production activities.

(5) "Motion Pictures" means, but is not limited to, narrative or documentary films or high definition digital production, and originally intended for commercial distribution to motion picture theaters, directly to the home video and/or DVD markets, cable television, broadcast television or video on demand.

(a) The term "Motion Picture" does not include:

(i) News;

(ii) Commercials;

(iii) Live Broadcasts;

(iv) Digital Media Products;

(v) Discrete Sporting events;

(vi) Live Coverage of other theatrical or entertainment events; or

(vii) Programs that solicit funds.

(6) "Rural Utah" means all counties outside of Davis County, Salt Lake County, Utah County, and Weber County.

(7) "Significant Percentage of cast and crew from Utah" means

(a) For productions that have less than $500,000 dollars left in state: that at least 85% of the cast and crew are Utah residents.

(b) For productions that have more than $500,000 dollars left in state: that at least 75% of the cast and crew are Utah residents excluding extras and five principal cast.

(c) "Utah Resident" means that the individual files a Utah Resident tax return.

(8) "State-approved production" means a production that is:

(a) approved by the office and ratified by the Governor's Office of Economic Development Board; and

(b) all or a portion of the production is produced in the state.

(9) "Total budget for the product" means the total budget for Dollars left in state of pre-production, production and post-production.

(10) "Treatment" means: A written description of the production.

(11) "UFC" means: the Utah Film Commission, a sub-entity of the Utah Governor's Office of Economic Development.

(12) "Utah Resident" means a person who files a Utah State Tax Return as a resident of Utah.

R357-5-3. Motion Picture Incentive Applications: Procedures and Minimum Requirements for a Motion Picture Company.

(1) A motion picture company's application may be approved for a motion picture incentive only if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) The motion picture company is making all or a portion of a motion picture in the state of Utah;

(b) The motion picture is a state approved production;

(c) The motion picture company guarantees UFC access to production's behind the scenes footage, interviews and still photography or allow the office to produce its own;

(d) The motion picture company guarantees the production will display the Utah logo as outlined in the incentive agreement and provide a screen shot of the logo as it appears in the credits.

(e) The motion picture company has obtained financing for at least 75% of the anticipated Dollars left in state for the project, and the applicant provides proof of financing in a form specified in the application documents.

(f) The motion picture company must retain financing as set forth in subsection (e) for the life of the contract with the State.

(g) The motion picture company intends to report at least $500,000 dollars left in state if applying for a film incentive pursuant to R357-5-5(1) or a maximum of under $500,000 if applying for an incentive pursuant to R357-5-5(2);

(h) As of the date that the Office receives a completed motion picture incentive application, the motion picture production company has not started principle photography of the production in the state.

(i) If a production has initiated principal photography prior to the Office's receipt of a completed application, the application for incentive shall be denied.

(2) The motion picture incentive application shall not be construed as a property right and neither the Office nor the Board is required to approve an application.

(3) In order to receive state approval for an incentive application, a production must, in the State's sole discretion, reflect positively on the image of state of Utah.

(a) In determining whether or not a production reflects positively on the image of the state of Utah, the Office and Board may take into consideration:

(i) Whether and to what extent the motion picture promotes Utah as a tourist destination;

(ii) the overall strength and viability of the script of the production;

(iii) the industry reputation of the production or motion picture company;

(iv) the record of the motion picture company in matters of safety and responsible filmmaking; and

(v) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company;

(vi) general standards of decency and respect for the diverse beliefs and values of Utahns; and

(vii) any other factors related to the production or the motion picture company that may reasonably affect the image of the state of Utah.

(4) The Office and Board may consider the relative merit of applications, and the need to reserve its allocations

for future applications.

(a) Factors that contribute to the relative merit will be weighted by a point system available on the Utah Film Commission's website and include, but are not limited to:

(i) Number of anticipated jobs in Utah;

(ii) Number of production days in Utah;

(iii) Length of employment for Utah cast and crew;

(iv) Local cast and crew wages;

(v) Other economic development that the film contributes in the State of Utah;

(b) Applications shall be made in the form prescribed by the Office, including required attachments or additional information.

(i) Incomplete applications will not be considered received until the application is deemed complete by the UFC.

(ii) A script is required as part of the application.

(1) A treatment may only be submitted where a script for a project type is not possible for example, because the project is a documentary or reality based television show. The Utah Film Commission will determine in its sole discretion if a treatment can be substituted for a script.

(5) A production company may file more than one application if it has more than one production in the state, but a separate application must be filed for each production.

(6) Applications will be subject to submission deadlines, which will be posted on the Utah Film Commission Website and are available in other formats upon request.

(a) If the applicant fails to submit a completed application prior to the submission deadline, the application may be considered with the next round of submissions.

(7) Submitting an application does not guarantee approval of a film incentive.

(a) All film incentives are subject to and contingent upon the amount of available funding and/or tax credit allocation available in the Motion Picture Restricted account;

(b) Lack of state approval shall not be construed as prohibiting a production or prohibiting a motion picture company from filming in Utah.

R357-5-4. Motion Picture Incentive Applications: Award for a Motion Picture Production.

(1) Upon receipt of a completed application, the Office will align each project into incentive categories as set forth in R357-5-5.

R357-5-5. Film Categories and Conditions.

(1) Utah Motion Picture Incentive Program

(a) The Utah motion Picture Incentive program will have an incentive cap of 20% the dollars left in state, unless a higher cap is awarded pursuant to subsection (c).

(b) Incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-3

(c) An additional cap of up to 5% may be granted if the motion picture company:

(i) Motion picture company has at least $1,000,000 in qualified dollars left in state, and

(ii) 75% of cast and crew are Utah residents excluding extras and five principal cast members, or

(iii) 75% of Dollars left in state occurs in rural Utah

(2) "Community Film Incentive Program"

(a) The "Community Film Incentive Program" will provide a maximum of a 20% post performance cash rebate or tax incentive for dollars left in state by a low budget production.

(b) "Community Film Incentive Program" incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-3, has a maximum budget of under $500,000, and meets following criteria:

(i) Minimum wage of 60% of area standard rates for each cast and crew member; and

(ii) 85% of cast and crew must be Utah residents;

(c) Applications for the "Community Film Incentive Program" will be reviewed quarterly beginning in August of each calendar year.

(d) Awards will be made to motion picture companies based upon the scoring system outlined in the "Community Film Incentive Program" application provided by UFC.

(3) For applications made under either (1) or (2), the motion picture company must provide all information and documentation to show measureable outcomes as outlined in the application for any incentive listed in R357-5-5.

R357-5-6. Funding -- Post-Performance Compliance.

(1) A motion picture company may qualify for issuance of either a Post-Performance Refundable Tax Credit or Post-Performance Cash award based on the method outlined in their contract if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) The motion picture company must follow the Agreed-Upon Procedures, which will be posted on the Utah Film Commission Website.

(i) If the motion picture company has residency requirements, the motion picture company will be responsible for providing sufficient documentation to the CPA for residency verification, this includes:

(A) A copy of a Utah driver's license; or

(B) A copy of government issued identification (from any state or foreign government or student ID/Report card), and (2) documentation showing residency, covering at least 183 days, matching the name, or parent or guardian, on the submitted government ID.

(b) The motion picture company must submit a completed final application to the Governor's Office of Economic Development's Compliance team, in the form prescribed by the Office, including required attachments or additional information.

(2) A CPA when conducting a review of a motion picture company's expenses and contract requirements, the CPA must follow the Agreed-Upon Procedures, which will be posted on the Utah Film Commission Website.

(3) The CPA must retain work papers related to performing these Agreed-Upon Procedures for at least two years. The Governor's Office of Economic Development, at its own discretion, shall have the right to review the CPA's work to ensure consistency amoung the various CPAs, to find areas for improvement to the Agreed-Upon Procedures, and as an internal control.

R357-5-8. Funding -- Post-Performance Refundable Tax Credit.

(1) Post-performance refundable tax credits are nontransferable and can only be issued to the state-approved motion picture that submits the motion picture incentive application and is approved by the office with advice from the Board.

R357-5-9. Funding -- Post-Performance Cash.

(1) The office may only issue funds appropriated by the state legislature to the Motion Picture Incentive Account to a motion picture company

(2) Post-performance cash can only be issued to the state-approved motion picture company who submits the motion picture incentive application and is approved by the office with advice from the Board.

R357-5-10. Request for Incentive Amendment.

(1) A motion picture company may request an incentive amendment only under the conditions listed in the incentive

application.

(2) Amendments will be reviewed and approved by the UFC on a case by case basis with a written explanation for the approval or denial provided to the applicant.

KEY: economic development, motion picture, digital media, new state revenue
December 8, 2017 63N-8-104
Notice of Continuation June 9, 2016

R362. Governor, Energy Development.
R362-1. Qualification for the Alternative Energy Development Tax Credit.
R362-1-1. Purpose and Authority.

(1) Purpose. Pursuant to the Alternative Energy Development Tax Credit Act, this rule establishes standards an alternative energy entity shall meet to qualify for a tax credit.

(2) Authority. This rule is authorized by Subsection 63M-4-503(1)(a), Utah Code.

R362-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63M-4-502.

(2) In addition:

(a) "site control" means an enforceable right to use a parcel of land for an alternative energy project; and

(b) "project development activities" means those actions described under Subsections 63M-4-502(3)(a) and 63M-4-502(3)(b).

R362-1-3. Conditions.

(1) In order to qualify for a tax credit, an alternative energy entity must meet those requirements outlined in Subsection 63M-4-503(1)(b), and must be prepared to:

(a) follow the procedures and expectations outlined in Sections 59-7-614.7, 59-10-1029, and 63M-4-504; and

(b) bear any costs associated with meeting the requirements outlined below in Subsection R362-1-4(2)(b)(ii)(A).

(2) In addition, the alternative energy entity must demonstrate the viability of its alternative energy project by submitting evidence it has secured:

(a) one or more land leases or other form of site control; and

(b) one or more of the following:

(i) permits from a local, state or federal regulatory agency, not to include conditional use permits;

(ii) financing sufficient to initiate project development activities, as may be:

(A) assessed, at the office's request, by third party financial review; or

(B) affirmed by the existence of one or more:

(I) power purchase agreements; or

(II) off-take agreements.

(iii) a position in the generation interconnection queue that has advanced beyond the Feasibility Study phase.

KEY: alternative energy development tax credit
September 24, 2012 63M-4-503(1)(a)
Notice of Continuation December 18, 2017

R362. Governor, Energy Development (Office of).
R362-2. Renewable Energy Systems Tax Credits.
R362-2-1. Purpose.

(A) This rule implements the responsibilities assigned to the Utah Governor's Office of Energy Development (OED) for the renewable energy systems tax credit programs established in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.

(C) This rule also establishes procedures for taxpayers to use when applying for OED certification of tax credit eligibility and tax credit amounts, and for OED to follow in reviewing such applications.

(D) This rule applies to all renewable energy systems installed or entering commercial service after January 1, 2007.

R362-2-2. Authority.

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the OED and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, the OED is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or producing energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the OED may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, the OED may also establish rules defining the reasonable costs of a system.

R362-2-3. Definitions.

(A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.

1. Active solar thermal systems include systems that:

a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;

b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and

c. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.

2. Active solar thermal systems do not include systems that use heat for evaporative cooling.

(C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

1. Materials that may be used to produce fuel or electricity are as follows:

a. material from a plant or tree; or

b. other organic matter that is available on a renewable basis, including:

i. slash and brush from forests and woodlands;

ii. animal waste;

iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;

iv. aquatic plants; and

v. agricultural products.

2. A biomass system does not include:

a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants

b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.

3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct- use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:

1. Were assembled or constructed at approximately the same time as part of a single project; and

2. Supply electricity to a common grid interconnection point.

This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

(E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10- 1106 that provide tax credits worth 10% of the reasonable cost, up to $50,000, of a commercial energy system.

(F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.

(I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.

(J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees

Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange equipment and that uses a "ground-source heat pump" technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or the Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8. This can include ground source heat pumps, water source heat pumps using ground water or surface water, and direct geoexchange heat pump systems.

(K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.

(L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10- 1014, and 59-10-1106 and that is not a production tax credit.

(N) "Loaded structure" means a part of the building that provides support to that building.

(O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:

1. Produces or is capable of producing at its maximum potential output; and

2. Sells all or some portion of its energy output or uses some portion its energy output for commercial activities located at the same site.

(P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(Q) "Production tax credit" means the credits defined in Subsections 59-7-614(2)(c) and 59-10- 1106(2)(b) that provides 0.35 cents per kilowatt-hour of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.

(R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.

(S) "Renewable energy system" means any of the following types of systems defined in Section 57-7- 614, 57-10-1014, and 57-10-1106:

1. Active solar including solar thermal and photovoltaics;

2. Biomass except for systems combusting biomass for heat;

3. Direct-use geothermal;

4. Geothermal electricity

5. Geothermal heat pump;

6. Hydroenergy;

7. Passive solar for heating or cooling;

8. Wind.

(T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to $2,000 of a residential energy system.

(U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.

(V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.

(W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

(X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).

(Y) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.

(Z) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R362-2-4. Investment Tax Credit Certification Process.

(A) OED is responsible for certifying renewable energy systems tax credits.

(B) Applications for credits are to be made on forms developed by OED to gather information necessary to implement this rule.

(C) OED will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, OED reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, OED may deny the application and no tax credit will be certified.

(D) If, after evaluating an application, OED finds that a renewable energy system is eligible for a residential or commercial tax credit, OED will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only OED may issue a completed TC-40E and a tax credit may not be claimed without such documentation.

(E) Upon the completion of OED's evaluation of an application, OED will provide to the applicant one of the following, as appropriate:

1. A completed TC-40E allowing the full amount of tax credit requested;

2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or

3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.

(F) If OED denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the OED manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.

(G) All applications for credits under this rule shall provide the following information:

1. The true legal name of the person or persons seeking a tax credit;

2. The tax identification number or numbers of persons seeking a tax credit;

3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed. Location information must be sufficient to permit OED staff to locate the site for on-site verification of the information in the application.

4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use, energy production capacity, cost, date of completed installation, and other information specified in this rule.

(H). Applications for residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:

1. Detailed diagrams of the system installed such that OED staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.

2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.

3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components, the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow OED to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.

R362-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

(A) Taxpayers applying for commercial investment tax credits are entitled to credits equal to 10% of the eligible costs of a renewable energy system up to a maximum of $50,000 for a commercial unit. This limit applies to the lifetime of the commercial unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed $50,000 for any single commercial unit.

(B) Taxpayers applying for residential investment tax credits are entitled to credits equal to 25% of the eligible costs of a renewable energy system up to a maximum of $2,000 for a residential unit. This limit applies to the lifetime of the residential unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same residential unit, however, the total of all credits awarded may not exceed $2,000.

(C) Eligible costs for equipment are generally limited to system components that are both:

1. Necessary for the renewable energy system to produce energy and to deliver that energy for end- use; and

2. Are not system components that would be used for a conventional energy system fulfilling a similar role in delivering energy for end-use.

(D) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

(E) Costs for equipment and installation of components on existing renewable energy systems are eligible only to the extent that the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax credit.

(F) All major energy-producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and purpose-built or manufactured for the intended application. Major components built from equipment not manufactured or built primarily for the purpose of generating renewable energy are not eligible unless it can be demonstrated that the component is necessary to the system and that no commercially available, purpose-built or manufactured equivalent is available.

(G) Energy storage devices, and equipment for regulating energy storage, for renewable energy systems that produce electricity are not considered to be eligible costs when used at a residential or commercial unit that is either:

1. Connected to the electrical grid; or

2. Within the service territory of a retail electricity provider and is less than one-quarter mile from an electrical distribution line.

(H) Costs for the installation of a renewable energy system are eligible. Labor costs for installation are eligible so long as the taxpayer has paid a qualified installer or other contractor for services. Costs that may be claimed for the estimated value of a taxpayer's own labor are not considered to be eligible.

(I) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not make use of a renewable energy source are not considered to be eligible costs.

(J) Costs for the design of a renewable energy system are generally eligible. However, in instances where design costs of a renewable energy system are included within the costs of a larger project (e.g. the design of a complete building), only the component of design costs specifically attributable to the design of the renewable energy system are eligible. Claims for design costs that do not separate eligible from ineligible costs will be deemed ineligible.

(K) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other type of rebate shall be not be considered an eligible cost for the purpose of calculating residential or commercial tax credits. For purposes of this rule, utility rebates in the form of credits against bills are considered to be cash rebates and should be deducted from eligible costs. However, the amount of any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.

(L) OED may, at its discretion, conduct an on-site inspection of a system applying for a commercial or residential tax credit. Applications for renewable energy systems that are found not to be in compliance with this rule or that are a variance with information provided in a tax credit application may be denied or the amount of the tax credit altered.

(M) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology-specific sections of this rule, below.

R362-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(A) All eligible costs for active solar thermal energy systems must conform with Section R362-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.

(B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional heating system. Eligible equipment costs include:

1. Solar collectors that transfer solar heat to water, a heat transfer fluid, or air;

2. Thermal storage devices such as tanks or heat sinks;

3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a building's conventional heating and cooling systems.

(C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.

(D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."

(E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems." The applicant can demonstrate to OED that the solar thermal system meets standards that are equivalent to those of the SRCC Document OG-300 by providing:

1. Detailed engineering design and performance data that show system performance, or

2. Certification from other recognized National or European solar thermal testing labs.

(F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:

1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar ration values ($kWh/M^2/day$). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at:

http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF;

2. Fixed, non-glazed collectors shall be:

a. Oriented within 45 degrees of true south if the fixed pitch is greater than 30 degrees from horizontal, or

b. Oriented within 90 degrees of true south if the fixed pitch is 30 degrees or less from horizontal.

3. Fixed, glazed collectors shall be oriented within:

a. 115 degree azimuth and 245 degree azimuth if the fixed pitch is greater than 35 degrees from horizontal, or

b. 90 degree azimuth and 270 degrees if the fixed pitch is 35 degrees or less from horizontal.

(G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.

(H) In order to be eligible for a residential or commercial tax credit, an active solar thermal system must be certified for safety by one of the following:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than $0.15 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

http://www.solar-rating.org/ratings/ratings.htm.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($0.15 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($0.15 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel active solar thermal system exceeds $0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED after investigation as to the validity of the waiver claim.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than $0.27 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

http://www.solar-rating.org/ratings/ratings.htm.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($0.27 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $0.27 per Btu/day, the amount of the

tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($0.27 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel solar thermal system exceeds $0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED after investigation as to the validity of the waiver claim.

R362-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

(A) All eligible costs for solar PV energy systems must conform with Section R362-2-5, above. Solar PV energy systems must also meet the requirements in this Section.

(B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:

1. Solar PV module(s);
2. Inverter;
3. Motors and other elements of a tracking array;
4. Mounting hardware;
5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;
6. Lightning arrestors.

(C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries;
2. Battery wiring;
3. Charge controllers; and
4. Battery temperature sensors.

(D) The costs of solar PV modules are eligible for Utah tax credits only if they are:

1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site:

http://www.gosolarcalifornia.org/equipment/index.html; or

2. The applicant can demonstrate to OED that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:

1. They are also listed as eligible inverters under the California Solar Initiative Program. A list of eligible inverters may be found at the following site:

http://www.gosolarcalifornia.org/equipment/index.html; or

2. The applicant can demonstrate to OED that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(F) Solar PV modules must be must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer to produce at least 80% of rated output after twenty years of operation.

(G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.

(F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.

(G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(H) The costs of system performance monitoring hardware and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back-up power systems are not eligible for the tax credit with the exception that the inverter within such systems will be considered to carry a cost of $2,500 for the purpose of calculating the tax credit.

(I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:

1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two-thirds of the daylight hours at the site;

2. Positioned so as to optimize the average annual solar radiation values ($kWh/M^2/day$). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at:

http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF);

3. Positioned such that the fixed solar array azimuth shall be oriented within:

a. 115 degrees and 245 degrees if the fixed pitch is greater than 35 degrees from horizontal, or

b. 90 degrees and 270 degrees if the fixed pitch is 35 degrees or less from horizontal.

(J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:

1. A Utah licensed electrical contractor (S200);
2. A Utah licensed solar photovoltaic contractor (S202);
3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or
4. A county or municipal building inspector licensed by the State of Utah. Proof of this certification may be required on the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than $5 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $5 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($5 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $5 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($5 x rated output capacity in watts) - rebates) x 0.10

(L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than $10 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $10 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($10 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($10 x rated output capacity in watts) - rebates) x 0.10

R362-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

(A) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. (For example providing heat in winter or at night but not during summer days.) All passive solar systems should contain the following in order to be eligible:

1. A means to allow the solar energy to enter the system;
2. A heat-absorbing surface;
3. A thermal storage mass located within the conditioned space;
4. A heat transferal system or mechanism and;
5. Protection from summer overheating and excessive winter heat-loss.

A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

(B) Eligible costs for a passive solar system include the costs of the following:

1. Trombe wall;
2. Water wall;
3. Thermosyphon;
4. Equipment or building shell components providing direct heat gain; and
5. Any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.

(C) The cost of a solarium is also considered to be eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed so as to prevent summer heating that would increase the load on the building's cooling system.

(D) The cost of windows and other glazing devices are eligible only when they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building. In addition, windows and other glazing devices are eligible only when they are oriented within 30 degrees of true south and when they are installed with shading devices or overhangs that prevent direct sun from entering the building in the summer while allowing direct sun in the winter. Windows and other glazing devices must also carry solar heat gain coefficient (SHGC) ratings of 0.50 or higher in order to allow sufficient amounts of heat into the building, but must carry a U-factor rating of 0.35 or less in order to provide sufficient insulation to the building.

(E) The cost of heat transportation systems shall be eligible provided they are part of the passive solar design and will not be used as part of a conventional heating system.

(F) Costs for the thermal storage mass of a passive solar system are eligible subject to the following:

1. For a non-loaded structure, 100% of the cost may be eligible;
2. For a loaded structure, 50% of the cost may be eligible;
3. Notwithstanding (1) and (2) above, the cost of thermal storage mass may not exceed 30% of the total system cost against which a tax credit is calculated.

(G) No tax credit shall be given if OED concludes that the passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months.

R362-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

(A) All eligible costs for wind energy systems must conform with Section R362-2-5, above. Wind energy systems must also meet the requirements in this Section.

(B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:

1. Listed and certified by the Small Wind Certification Council in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: http://www.smallwindcertification.org/certified-turbines/
2. The applicant can demonstrate to OED that the turbine meets standards that are equivalent to those of the Small Wind Certification Council as of calendar year 2007.

(C) Inverters and charge controllers must by certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.

(D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid-connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.

(E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:

1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:
   a. Buildings;
   b. Utility poles or overhead utility lines;
   c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.
2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:
   a. Trees or other vegetation;
   b. Buildings and other structures;

c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that OED can verify appropriate siting. OED also reserves the right to conduct a site visit to verify appropriate siting.

(F). Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.

(G) Wind energy systems must include lightning protection to be eligible for residential or commercial tax credits.

(H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.

(I) In order to be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

(J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than $8 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $8 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($8 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $8 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($8 x rated output capacity in watts) - rebates) x 0.10

R362-2-10. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R362-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

(B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% of the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air-source heat pumps, or any other mechanism not involving thermal ground coupling are not eligible.

(C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8.

(D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah;

2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or

3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers; or

4. For geothermal heat pump systems installed in a residential unit only, a person designated as an "Accredited Installer" by the International Ground Source Heat Pump Association (IGSHPA).

5. For direct geoexchange systems, a person designated as a certified designer by an AHRI accredited direct geoexchange systems manufacturer.

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed by a plumber licensed (S210) or HVAC contractor (S350) in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a non-production well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not eligible.

(H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the installer against leakage or breakage for not less than three years from the date of installation.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the eligible cost of a geothermal heat pump system is considered to be no higher than $6,500 per ton of output capacity for residential systems and $5,500 per ton of output capacity for commercial systems for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding $6,500 per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($6,500 x rated output capacity in tons) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding $5,500 per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($5,500 x rated output capacity in tons) - rebates) x 0.10

3. If the cost of a geothermal heat pump system exceeds $6,500(residential) or $5,500(commercial) per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED and OED after investigation as to the validity of the waiver claim.

R362-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

(A) All eligible costs for geothermal electric systems must conform with Section R362-2-5, above. Geothermal electric systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power. Eligible equipment costs include production and injection wells and well casings, wellhead pumps, and turbine generators. In addition, flash tanks (flash steam systems), heat exchangers (binary cycle systems), condensers, cooling towers, associated wiring and disconnects, and associated pumps are eligible.

(C) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible components of the system that are listed in (B) above. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final geothermal electrical system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights. Proof of driller qualifications and well right may be required on the tax credit application.

(G) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah; or

2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

(A) All eligible costs for direct use geothermal systems must conform with Section R362-2-5, above. Direct use geothermal systems must also meet the requirements in this Section.

(B) Eligible costs for a direct use geothermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include wells and well casings, wellhead pumps, and heat exchangers where well water is not directly used within a building or a manufacturer's heating system. Equipment and components beyond the wellhead or, where applicable, a heat exchanger, are not eligible. However, water treatment equipment that would permit the direct use of well water within a heating system, is considered eligible.

(C) Design costs for a direct use geothermal system are eligible but only for the components of the system that would not normally be associated with a conventional hot water heating system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final direct use geothermal system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights. Proof of driller qualifications and well right may be required on the tax credit application.

R362-2-13. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Hydroenergy.

(A) All eligible costs for hydroenergy systems must conform with Section R362-2-5, above. Hydroenergy systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a hydroenergy system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power. The costs of the following hydroenergy system components are eligible for residential or commercial tax credits:

1. Turbine;
2. Generator;
3. Rectifier;
4. Inverter;
5. Penstocks;
6. Penstock ventilation;
7. Buck and boost transformer;
8. Valves;
9. Drains;
10. Diversion structures (with the exception of storage dams, fish facilities, and canals);
11. Screened intake device; and
12. Wiring and disconnects from generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(C) The costs of additional components of hydroenergy

systems are eligible for residential or commercial tax credits if the hydroenergy system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries and necessary wiring and disconnects;
2. Battery temperature sensors;
3. Charge controller and necessary wiring and disconnects;
4. Electric load governor and necessary wiring and disconnects.

(D) In order to be eligible for a residential or commercial tax credit, a hydroenergy system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

(A) All eligible costs for biomass systems must conform with Section R362-2-5, above. Biomass systems must also meet the requirements in this Section.

(B) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of biomass materials, nor the storage of biomass materials at a location separate from the facility at which electricity or fuel will be produced. It also does not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

(C) For biomass systems that produce fuels, eligible system costs include the costs of equipment to receive, handle, collect, condition, store, process, and convert biomass materials into fuels at the processing site.

(D) For biomass systems that that use biomass as the sole fuel for producing electricity, the following are eligible equipment costs:

1. Systems for collecting and transporting methane from a digester or landfill;
2. On-site systems or facilities for collecting biomass that will be used in a digester or boiler;
3. Equipment necessary to prepare biomass for use as a fuel (e.g. driers, chippers);
4. Engines or turbines used to power generators;
5. Generators;
6. Inverters;
7. Wiring and disconnects from the generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(F) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(G) In order to be eligible for residential or commercial tax credits, a biomass system that produces electricity must have been designed by either:

1. A professional engineer licensed in Utah; or
2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a biomass system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-15. Certification of Production Tax Credit Eligibility.

(A) Businesses seeking to claim production tax credits must first apply to OED for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other relevant requirements of Sections 59-7-614 and 59-10-1106. Such certification shall be sought within the first six months of the system being placed into commercial service.

(B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:

1. Biomass systems;
2. Wind energy systems; or
3. Geothermal electricity systems.

In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.

(C) Businesses may request certification by providing the following to OED:

1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;
2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;
3. A description of the commercial energy system including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used;
4. Information on the location of the commercial energy system sufficient to permit site inspection by OED staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;
5. Photographs of key and/or representative components of the commercial energy system;
6. Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;
7. The date on which the commercial energy system entered or is expected to enter commercial service.

(D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.

(E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity

from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).

(F) Upon receipt of a request for certification, OED staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. OED may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.

(G) OED will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, OED will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.

(H) Consistent with Title 63G, Chapter 4 (Administrative Procedures Act), upon its decision to grant or deny a certification request, OED will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the Utah State Tax Commission in order to document the company's eligibility to claim production tax credits on future tax returns.

R362-2-16. Granting of Production Tax Credits.

(A) In order for a company to be granted production tax credits on a return filed under Chapter 59, Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, OED must validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to OED information regarding the following:

1. The date that the commercial energy system first entered commercial service;

2. The beginning and ending dates of the company's tax year;

3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.

All such information will be provided on a standard claim form created by OED.

(B) For purposes of validating the number of kilowatt hours sold, the company should also submit to OED invoices or other information that documents that number of kilowatt hours of electricity sold.

(C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. OED will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.

(D) Once it has received a production tax credit claim from a company, OED will make a determination as to:

1. Whether the information provided conforms with this rule and is complete;

2. Whether the number of kilowatt hours claimed appears to be feasible and accurate;

3. The number of kilowatts deemed to be valid;

4. The amount of tax credit that the company may claim on its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.

(E) A company claiming a production tax credit must submit the information specified above to OED on or before the date the tax return on which the credit is claimed is required to be filed with the State Tax Commission. Once OED has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either OED or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.

(F) If OED denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the OED manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.

(G) Information submitted by an applicant under this section for validating a production tax credit claim will be classified as protected information under UC 63G-2-305)(1) and/or UC 63G-2-305(2) when the applicant provides OED with a written claim of confidentiality and a concise statement supporting the claim, consistent with UC 63G-2- 309(1)(a)(i). OED shall provide the opportunity to make such a claim on the standard form referenced in subsection (A) above.

KEY: energy, renewable, tax credits, solar

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R362. Governor, Energy Development (Office of).
R362-3. Energy Efficiency Fund.
R362-3-1. Purpose.

(1) This rule is for the purposes of

(a) Implementing the responsibilities assigned to the Utah Governor's Energy Advisor (Advisor), and the Utah Office of Energy Development (Office) in managing the Energy Efficiency Fund as defined in Utah Code Section 11-45-102, and implementing the associated loan program established in Utah Code Section 11-45-201; and

(b) Establishing requirements for eligibility for loans from the Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R362-3-2. Authority.

(1) Pursuant to Utah Code Section 11-45-204, the Advisor shall make rules establishing criteria, procedures, priorities, and conditions for the award of loans from the Energy Efficiency Fund.

R362-3-3. Definitions.

(1) "Advisor" means the Governor's Energy Advisor, who oversees the Utah Office of Energy Development.

(2) "Energy" means, for the purposes of this rule, electricity, natural gas or other methane, fuel oil, coal, or propane that is used by a political subdivision to operate a building's electrical devices, lighting, heating and cooling systems, and other equipment necessary for the building's operation.

(3) "Energy cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money and is sometimes referred to as simple payback.

(4) "Energy cost savings" means the monetary value to a political subdivision of the energy that is saved or is not consumed as a result of an energy efficiency project and is generally stated on an annual cost savings basis. This value is measured based upon the current cost per unit of the energy source or sources used by the building at which an energy efficiency project is to take place.

(5) "Energy savings" means the combined value, in British thermal units (Btu's), of all energy sources saved or not consumed as a result of an energy efficiency project. For purposes of this rule, the following conversion factors are used in calculating the total energy savings:

(a) Electricity - One kilowatt hour = 10,495 Btu's.

(b) Natural gas or methane - One therm = 100,000 Btu's.

(c) Natural gas or methane - One cubic foot = 1,030 Btu's.

(d) Fuel oil - One gallon = 138,690 Btu's.

(e) Coal - One pound = 11,580 Btu's.

(f) Propane - One gallon = 91,333 Btu's.

(6) "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

(7) "Director" means Director of the Utah Office of Energy Development.

(8) "Associate Director" means Associate Director of the Utah Office of Energy Development.

R362-3-4. Eligibility of Projects for Loans.

(1) Eligibility for loans from the Fund is limited to political subdivisions within the State of Utah.

(2) Loans may be used only by political subdivisions to fully or partially finance energy efficiency projects within buildings owned and operated by the political subdivision.

(3) For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures are eligible for loan financing from the Fund:

(a) Building exterior weatherization, air sealing, or thermal efficiency;

(b) Increase or improvement in building insulation;

(c) Door, window, or skylight upgrades;

(d) Lighting technology upgrades, or reduction of the number of fixtures;

(e) Heating, ventilation, and air conditioning (HVAC) replacements or upgrades;

(f) Improvements to energy control systems;

(g) Renewable energy systems;

(h) Other energy efficiency projects that a political subdivision can demonstrate will result in a significant reduction in the consumption of energy within a building.

(4) The following project measures are not eligible for energy efficiency projects from the Fund involving renovation, upgrade, or improvement of existing buildings:

(a) The repair of existing buildings or equipment;

(b) Projects that save money through switching of fuels, energy sources, or vendors, except in the case of the installation of a renewable energy system or other fuel changes that result in energy savings;

(c) Projects or measures intended to save money by changing the time of day or year at which energy is consumed (i.e. thermal energy storage or other peak demand reduction systems); or

(d) Upgrades to non-fixed appliances or equipment within a building such as computers, copiers, and other systems.

(5) An energy efficiency project can be eligible as part of a new building construction if the following conditions are met:

(a) The building measure or system for which a loan is sought must surpass the minimum prescriptive requirements of the Utah Energy Code; and

(b) The completed building must exceed the minimum energy performance standards of the Utah Energy Code for its building type by at least 10%.

(6) An energy efficiency project is eligible for a loan only if the total amount of funds awarded to the project are repaid in a term of between two and twelve years.

R362-3-5. Eligible Costs.

(1) This section defines the specific costs incurred by an energy efficiency project that are eligible for financing from the Fund.

(2) The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

(a) Building materials;

(b) Doors, windows, and skylights;

(c) Mechanical systems and components including HVAC and hot water;

(d) Electrical systems and components including lighting, renewable energy systems, and energy management systems.

(e) Labor necessary for the construction or installation of the energy efficiency project;

(f) Design and planning of the energy efficiency project;

(g) Energy audits that identify measures that are included in the energy efficiency project;

(h) Commissioning, inspections or certifications necessary for implementing the energy efficiency project.

(3) The following costs are not eligible for financing from the Fund:

(a) The costs of a construction or renovation project that are not directly related to energy efficiency measures;

(b) Costs incurred for the acquisition of financing for the project;

(c) Costs for equipment or systems that reduce energy costs without also resulting in reductions in the use of energy.

(4) In cases for which the political subdivision receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the political subdivision for the project after third party financing.

(5) For an energy efficiency project undertaken as part of a new building construction, only the incremental cost of the project is eligible. For purposes of this section, incremental cost means the portion of the overall cost of a measure or system that exceeds the cost that would have been incurred by meeting the minimum prescriptive requirements of the Utah Energy Code.

(6) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund.

R362-3-6. Loan Application Process.

(1) The Office shall receive and evaluate applications for loans from the Fund during competitive bid cycles, based on Fund availability.

(2) Political subdivisions interested in applying for a loan should first contact the Office. Office staff will consult or meet with political subdivision staff to make an initial assessment of the strength or weakness of a proposed project. Office staff may also choose to conduct a site visit of the proposed project location prior to an application. Office staff shall engage with political subdivisions in a pre-application process evaluating potential project measures and preparing applications.

(3) Applications for loans will be made using forms developed by the Office. Application forms shall require that the following information be provided by the political subdivision:

(a) Identification of political subdivision personnel responsible for financial authority and project management;

(b) Name and location of the building or buildings where the energy efficiency project will take place;

(c) A description of the energy efficiency project to be undertaken, including existing conditions, specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

(d) Projected or estimated energy savings that result from each measure undertaken as part of the project;

(e) Projected or estimated energy cost savings from each measure undertaken as part of the project;

(f) Appendices providing supplemental information detailing the extent of political subdivision commitment to the project (i.e. special needs, prior investments, existing audit/design documents) or descriptions of any additional community or environmental benefits that may result from the project.

(4) The Office and the Advisor or Director shall establish a Review Committee to provide in-depth evaluation of loan applications. The Committee shall consist of at least the following:

(a) The State Energy Program Manager;

(b) An Office technical specialist;

(c) The Associate Director; and

(d) Other members as may be designated at the discretion of the Advisor or Director.

(5) When the Office has deemed that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Review Committee for its evaluation.

(6) The Review Committee will review and discuss the merits of each application in light of all materials submitted by the political subdivision and technical analysis undertaken by Office staff. After discussion of each application, Review Committee members will evaluate each according to the following criteria and scoring:

(a) The feasibility and practicality of the project (maximum 35 points);

(b) The projected energy cost payback period of the project (maximum 25 points);

(c) The energy savings and energy cost savings attributable to the project (maximum 40 points);

A separate score sheet will be completed by each Review Committee member for each application under consideration.

(7) The Review Committee will compile the scores of each of its members for each application. Based upon the compiled scores of all members, the Committee will make recommendations to the Advisor or Director for the funding of energy efficiency projects.

(8) The Review Committee provides advice and recommendations to the Advisor or Director. It is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Advisor or Director is the decision making authority with regard to the award of loans from the Fund.

(9) Based upon the Review Committee's evaluations and recommendations, the Office will prepare a memorandum for the Advisor or Director that will

(a) Provide a brief description of each project reviewed by the Review Committee;

(b) List estimates of energy savings, energy cost savings and simple paybacks.

(c) Specify projects recommended for funding and those not recommended for funding;

(d) Provide a brief explanation of the Review Committee's rationale for each application that is not recommended for funding.

(10) The Advisor or Director can approve or deny loans through electronic correspondence if a majority of the Review Committee is in favor.

(11) When considering loan applications, the Office upon consultation with the Advisor or Director may modify the dollar amount or project scope for approved projects if the Office determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

R362-3-7. Loan Terms.

(1) The maximum amount that may be approved by the Advisor or Director for any single energy efficiency project is $1,000,000. The minimum amount that may be approved is $5,000.

(2) The final value of any loan may vary from the Advisor or Director-approved amount according to the actual incursion of costs by the political subdivision. In cases where costs have exceeded those presented in the initial application, a political subdivision may request that the Advisor or Director increase its loan award, subject to the limitations of subsections (1) and (2) above.

(3) After approval of a loan application by the Advisor or Director, a political subdivision has one year in which to complete the energy efficiency project. If at the end of one

year a political subdivision is unable to meet this time limitation, it may request an extension from the Office of no more than six additional months.

(4) Loan amounts from the Fund will be reserved for periodic disbursement upon invoice approval at the discretion of the Office. Expenditures will be documented in each quarterly progress report, and the final 10% withheld pending a determination of substantial completion by the Office.

(5) Once a project has been completed, the political subdivision shall provide the Office documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. The Office will use this information to determine the actual cost of the project measures approved by the Advisor or Director.

(6) The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless

(a) This amount exceeds $1,000,000, in which case the amount of the loan will be set at $1,000,000; or

(b) This amount exceeds the amount approved by the Advisor or Director, in which case the loan amount will be set at the amount originally approved by the Advisor or Director; or

(c) This amount exceeds the amount approved by the Advisor or Director and the Advisor or Director increases the loan award at the request of the political subdivision.

(7) At the discretion of the Office, interest will be charged to political subdivisions receiving loans for energy efficiency projects from the Fund at or below market interest rates.

(8) An administrative fee may be charged to loan recipients to defray the cost of servicing loan accounts.

(9) Loan repayment periods will be set to any term desired by the applicant between two and twelve years at the discretion of the Office. The loan repayment period for a specific energy efficiency project begins with the first day of the next quarter after all of the loan funds have been disbursed.

(10) Loan repayments will be due at the beginning of each quarter.

(11) Quarterly loan repayment amounts will be calculated using a standard amortization schedule.

(12) Political subdivisions that are approved for a loan award will enter into a contract with the Office that specifies all terms applying to the loan, including the terms specified in this rule and standard contract terms for contracts and loans currently in effect for the State of Utah.

R362-3-8. Reporting and Site Visits.

(1) In the period between approval and project completion, the political subdivision shall complete and provide to the Office a report at the beginning of each quarter. The report shall include information on the political subdivision's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, what proportion of the loan award has been disbursed in the quarter and total to date, and any notable problems or changes in the project since Advisor or Director approval such as construction delays or cost overruns.

(2) If a political subdivision fails to submit the quarterly reports described in subsection (1) above, the Office upon consulting with the Advisor or Director may freeze the remainder of the loan award.

(3) After loan funds have been completely disbursed, the political subdivision shall complete and provide to the Office annual reports due at the beginning of the calendar quarter in which the anniversary of the loan repayment period began. This report shall include the following:

(a) A description of the performance of the building and of the performance of the measures included in the energy efficiency project;

(b) A description of any notable problems that have occurred with the building or the project;

(c) A description of any notable changes to the building or to its operations that would cause a significant change in its energy consumption;

(d) Documentation of building energy consumption and cost in the prior year.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, whichever is longer.

(4) If a political subdivision fails to submit the annual reports described in subsection (3) above, the Office upon consulting with the Advisor or Director may bar the political subdivision from eligibility for future loans from the Fund.

(5) Approximately one year after project completion, Office staff will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by Office staff during the repayment period. Loan recipients will assist the Office with such site visits, including providing access to all components of the energy efficiency project.

KEY: energy, efficiency, municipalities, loans
January 7, 2015 11-45-101
Notice of Continuation December 18, 2017

R380. Health, Administration.
R380-42. Open and Public Meetings Act Electronic Meetings.
R380-42-1. Authority and Purpose.

(1) Utah Code Section 52-4-207 requires a state public body that holds electronic meetings to have a rule governing the use of electronic meetings. This rule establishes procedures for conducting electronic meetings by each public body created by statute within Utah Code, Title 26 or by Department rule, except for any public body that has adopted its own rule.

(2) A public body with rule making authority may adopt a separate rule governing its electronic meetings.

(3) This rule is authorized by Sections 52-4-207, 63G-3-201 and 26-1-5.

R380-42-2. Definitions.

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Meeting" means a meeting of the public body that is required to be public by the provisions of the Open and Public Meetings Act, Utah Code Title 52, Chapter 4.

(2) "Electronic meeting" includes any meeting where at least one member of the public body participates in the public meeting by telephonic or other electronic means.

(3) "Presiding officer" means the member of the public body designated by statute, rule, or vote of the public body to preside at a meeting of the public body.

(4) "Business day" means a day that the Department is open to the public for the conduct of business, exclusive of weekends and state holidays.

R380-42-3. Designation of Electronic Meetings.

(1) The presiding officer may schedule any meeting as an electronic meeting upon the presiding officer's discretion or upon request of any member of the public body.

(a) A member of the public body may request that the member's participation in the meeting be allowed electronically up to 48 hours, but no less than two business days, prior to the commencement of the meeting. The presiding officer may refuse a member's request to hold a meeting electronically.

(b) If the Department cannot technically arrange for the meeting to be held electronically, the presiding officer's decision to allow electronic participation the Department may deny the request.

(c) The presiding officer or the Department may restrict the number of connections for members to participate in the meeting based on available equipment capability.

(d) If budget constraints do not allow the Department to provide an electronic connection at no charge to the member, the member who chooses to participate electronically may be required to do so at his or her own cost.

(2) No vote of the public body is necessary to include other members of the public body to join the meeting through an electronic connection.

R380-42-4. Anchor Location.

(1) Unless otherwise designated in the posted public notice of the meeting, the anchor location for an electronic meeting held by the public body is the Cannon Health Building located at 288 North 1460 West, Salt Lake City, Utah.

(2) The person presiding at the meeting may restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability.

(3) The Department shall provide a meeting room for an anchor location for any meeting that is held electronically.

R380-42-5. Quorum, Member Participation.

(1) A quorum is not required to be present at the anchor location.

(2) A member of the public body who participates in the meeting via electronic means shall be counted as present at the meeting for quorum, participation, and voting requirements.

R380-42-6. Public Participation.

Interested persons and the public may attend and monitor the open portions of the meeting at the anchor location.

KEY: electronic meetings, open and public meetings
December 11, 2012 52-4-207
Notice of Continuation December 7, 2017

R381. Health, Child Care Center Licensing Committee.
R381-60. Hourly Child Care Centers.
R381-60-1. Legal Authority and Purpose.

(1) This rule is enacted and enforced in accordance with Utah Code, Title 26, Chapter 39.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in hourly child care centers and defines the general procedures and requirements to obtain and maintain a license to provide child care.

R381-60-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background screening that may result in a denial from Child Care Licensing.

(4) "Background Screening Denial" means that an individual has failed the background screening and is prohibited from being involved with a child care program.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(8) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(9) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(10) "Child Care" means continuous care and supervision of 5 or more qualifying children that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(11) "Child Care Center Licensing Committee" means the Child Care Center Licensing Committee created in the Utah Child Care Licensing Act.

(12) "Child Care Program" means a person or business that offers child care.

(13) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(14) "Conditional Status" means that the provider is at risk of losing their license because compliance with licensing rules has not been maintained.

(15) "Covered Individual" means any of the following individuals involved with a child care program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(e) a caregiver;

(f) a volunteer, except a parent of a child enrolled in the child care program;

(g) an individual age 12 years or older who resides in the facility; and

(h) anyone who has unsupervised contact with a child in care.

(16) "CPSC" means the Consumer Product Safety Commission.

(17) "Department" means the Utah Department of Health.

(18) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(19) "Director" means a person who meets the director qualifications in this rule, and who assumes the day-to-day responsibilities for compliance with Child Care Licensing rules.

(20) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(21) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(22) "Facility" means a child care program or the premises approved by the Department to be used for child care.

(23) "Group" means the children who are supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.

(24) "Group Size" means the number of children in a group.

(25) "Guest" means an individual who is not a covered individual and is at the child care facility with the provider's permission.

(26) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(27) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(28) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(29) "Infant" means a child who is younger than 12 months of age.

(30) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(31) "Involved with Child Care" means to do any of the following at or for a child care program licensed by the Department:

(a) provide child care;

(b) volunteer at a child care program;

(c) own, operate, direct, or be employed at a child care program;

(d) reside at a facility where child care is provided; or

(e) be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.

(32) "License" means a license issued by the Department to provide child care services.

(33) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(34) "LIS Supported Finding" means background screening information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(35) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(36) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

(37) "Parent" means the parent or legal guardian of a child in care.

(38) "Person" means an individual or a business entity.

(39) "Physical Abuse" means causing nonaccidental physical harm to a child.

(40) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

(41) "Preschooler" means a child age 2 through 4 years old.

(42) "Protective Barrier" means a structure such as bars, lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

(43) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

(44) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(45) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(46) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(47) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(48) "School-Age Child" means a child age 5 through 12 years old.

(49) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(50) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(51) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(52) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(53) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as a protruding S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(54) "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

(55) "Toddler" means a child aged 12 through 23 months.

(56) "Unrelated Child" means a child who is not a "related child" as defined in R381-60-2(46).

(57) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background screening.

(58) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(59) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(60) "Working Days" means the days of the week the Department is open for business.

R381-60-3. License Required.

(1) A person or persons shall be licensed as an hourly child care center if they provide care:

(a) in the absence of the child's parent;

(b) in a place other than the provider's home or the child's home;

(c) for 5 or more children;

(d) for 4 or more hours per day, and no child is cared for on a regular schedule;

(e) for each individual child for less than 24 hours per day,

(f) on an ongoing basis for 4 or more weeks in a year, and

(g) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who cares for related children only, or

(b) a person who provides care on a sporadic basis only.

(3) According to Foster Care Services rule R501-12-4(8)(f), a provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

R381-60-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of the educational credentials of the person who will be the director as required in R381-60-7(4);

(f) a copy of a completed Department health and safety plan form;

(g) CCL background screenings for all covered individuals as required in R381-60-8;

(h) a current copy of the Department's new provider

training certificate of attendance; and

(i) all required fees, which are nonrefundable.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;

(c) exit doors shall operate properly and shall be well maintained;

(d) obstructions in exits, aisles, corridors, and stairways shall be removed;

(e) items stored under exit stairs shall be removed;

(f) exit doors shall be unlocked from the inside during business hours;

(g) exits shall be clearly identified;

(h) there shall be unobstructed fire extinguishers that are of an X minimum rate and appropriate to the type of hazard, currently charged and serviced, and mounted not more than 5 feet above the floor;

(i) there shall be working smoke detectors that are properly installed on each level of the building; and

(j) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the provider serves food and the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) cooks shall use hair restraints and wear clean outer clothing;

(f) according to Food Code 2-103-11, only necessary staff shall be present in the kitchen;

(g) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(h) chemicals shall be stored away from food and food service items;

(i) food shall be properly stored, kept to the proper temperature, and in good condition; and

(j) there shall be a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

(a) a change of the child care facility's location, or

(b) a change that transfers 50 percent or more ownership or controlling interest to a new individual or entity.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

(b) a change in the name of the program;

(c) a change in the regulation category of the program;

(d) a change in the name of the provider;

(e) an addition or loss of a director; or

(f) a change in ownership that does not require a new license.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R381-60-5. Rule Violations and Penalties.

(1) The Department may place a program's child care license on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The Department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The Department may increase monitoring of the program that is on conditional status to verify compliance with rules.

(4) The Department may deny or revoke a license if the child care provider:

(a) fails to meet the conditions of a license on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) misrepresents information by intentionally altering a license or any other document issued by the Department;

(e) refuses to allow authorized representatives of the Department access to the facility to ensure compliance with rules;

(f) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude a person from having a license.

(5) Within 10 working days of receipt of a revocation notice, the provider shall submit to the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the revocation.

(6) The Department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect their health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child in care, the Department may order the child care provider to suspend services and/or prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

(9) If a person is providing care for more than 4 unrelated children without the appropriate license, the Department may:

(a) issue a cease and desist order, or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a license,

(ii) conditions do not create a clear and present danger to the children in care, and

(iii) the person agrees to apply for the appropriate license within 30 calendar days of notification by the Department.

(10) If a person providing care without the appropriate license agrees to apply for a license but does not submit an application and all required application documents within 30 days, the Department may issue a cease and desist order.

(11) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code, Section 26-39-601.

(12) Assessment of any civil money penalty does not prevent the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license.

(13) Assessment of any administrative civil money penalty under this section does not prevent court-ordered or other equitable remedies.

(14) The Department may deny an application or revoke a license for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional inspections, conditional monitoring inspections, background screenings, civil money penalties, and other fees assessed by the Department.

(15) An applicant or provider may appeal any Department decision within 30 days of being informed of the decision.

R381-60-6. Administration and Children's Records.

(1) The provider shall:

(a) be at least 21 years of age,

(b) pass a CCL background screening, and

(c) complete the new provider training offered by the Department.

(2) If the owner is not a sole proprietor, the business entity shall submit to the Department the name(s) and contact information of the individual(s) who shall legally represent them and who shall comply with the requirements stated in R381-60-6(1).

(3) The provider shall not engage in or allow conduct that endangers children in care; or is contrary to the health, morals, welfare, and safety of the public.

(4) The provider shall have knowledge of and comply with all federal, state, and local laws, ordinances, and rules, and shall be responsible for the operation and management of a child care program.

(5) The provider shall comply with licensing rules at all times when a child in care is present.

(6) The provider shall post the original child care license on the facility premises in a place readily visible and accessible to the public.

(7) The provider shall post a copy of the Department's Parent Guide at the facility for parent review during business hours.

(8) The provider shall inform parents and the Department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(9) The provider shall establish, follow, and ensure that all staff and volunteers follow a written health and safety plan that is:

(a) completed on the Department's required form,

(b) submitted to the Department for initial approval and any time changes are made to the plan,

(c) reviewed and updated as needed,

(d) signed and dated at least annually, and

(e) available for review by parents, staff, and the Department during business hours.

(10) The provider shall ensure that each parent completes an admission and health assessment form for their child before the child is admitted into the child care program.

(11) The admission and health assessment form shall include the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of people authorized by the parent to pick up the child;

(e) name, address, and phone number of a person to be

contacted in case of an emergency if the provider is unable to contact the parent;

(f) any special health instructions for the caregiver; and

(g) certification that all immunizations are current.

(12) The admission and health assessment form shall:

(a) be signed by the parent; and

(b) kept on-site for review by the Department.

(13) Each child's information shall be kept confidential and shall not be released without written parental permission.

R381-60-7. Personnel and Training Requirements.

(1) The provider shall train and supervise employees and volunteers to ensure that they are qualified to:

(a) meet the needs of the children as required by rule, and

(b) be in compliance with all licensing rules.

(2) The provider shall ensure that the center has a qualified director as required by licensing rules.

(3) The director shall:

(a) be at least 21 years of age;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) complete the new director training offered by the Department within 60 working days of assuming director duties;

(e) have knowledge of and follow all applicable laws and rules; and

(f) complete at least 10 hours of child care training each year, based on the facility's license date.

(4) New directors shall have one of the following educational credentials:

(a) any bachelor's or higher education degree, and at least 60 clock hours of approved Utah Early Childhood Career Ladder courses in child development, social/emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the Department;

(b) at least 12 college credit hours of child development courses;

(c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other equivalent credential as approved by the Department;

(d) at least a Level 9 from the Utah Early Childhood Career Ladder system; or

(e) a National Administrator Credential (NAC) and at least 60 clock hours of approved Utah Early Childhood Career Ladder courses in child development, social/emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the Department.

(5) The director shall arrange for a designee who shall have authority to act on behalf of the director in the director's absence.

(6) The director designee shall:

(a) be at least 21 years of age;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 10 hours of child care training each year, based on the facility's license date.

(7) The director or the director designee shall be present at the facility whenever the center is open for care.

(8) The provider shall have on-site for review by the Department documentation of having employees who are on call and, when needed, can arrive at the facility within 20 minutes.

(9) Caregivers shall:

(a) be at least 16 years old;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before caring for children;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 10 hours of child care training each year, based on the facility's license date.

(10) Substitutes shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) be capable of providing care, supervising children, and handling emergencies in the caregiver's absence;

(d) receive at least 2.5 hours of preservice training before caring for children; and

(e) complete at least 1/2 hour of child care training for each month they work 40 hours or more.

(11) All other employees such as drivers, cooks, and clerks shall:

(a) pass a CCL background screening,

(b) receive at least 2.5 hours of preservice training before beginning job duties, and

(c) have knowledge of and follow all applicable laws and rules.

(12) Volunteers shall:

(a) pass a CCL background screening, and

(b) not have unsupervised contact with any child in care if the volunteer is younger than 18 years of age.

(13) Guests:

(a) shall not have unsupervised contact with any child in care,

(b) shall wear a guest nametag, and

(c) are not required to pass a CCL background screening.

(14) Student interns who are registered and participating in a high school or college child care course:

(a) are not required to pass a CCL background screening,

(b) shall not have unsupervised contact with any child in care, and

(c) shall wear a guest nametag.

(15) Parents of children in care:

(a) shall not have unsupervised contact with any child in care except their own, and

(b) do not need a CCL background screening unless involved with child care in the center.

(16) Household members who are:

(a) 12 to 17 years old shall pass a CCL background screening;

(b) 18 years of age or older shall pass a CCL background screening that includes fingerprints; and

(c) younger than 18 years of age shall not have unsupervised contact with any child in care including during offsite activities and transportation.

(17) Individuals who provide IEP or IFSP services such as physical, occupational, or speech therapists:

(a) are not required to have a CCL background screening as long as the child's parent has given permission for services to take place at the center, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(18) Members from law enforcement or from Child Protective Services:

(a) are not required to have a CCL background screening, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(19) Preservice training shall include the following:
(a) job description and duties;
(b) current Department rule sections R381-60-7 through 24;
(c) the Department-approved health and safety plan that includes preparing for and responding to emergencies;
(d) prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;
(e) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;
(f) prevention of sudden infant death syndrome (SIDS) and the use of safe sleeping practices;
(g) recognizing the signs of homelessness and available assistance;
(h) a review of the information in each child's health assessment in the caregiver's assigned group; and
(i) an introduction and orientation to the children in care.
(20) Documentation of each individual's preservice training shall be kept on-site for review by the Department and include the following:
(a) training topics,
(b) date of the training, and
(c) total hours or minutes of training.
(21) Annual child care training shall include the following topics:
(a) current Department rule sections R381-60-7 through 24;
(b) the Department-approved health and safety plan that includes preparing for and responding to emergencies;
(c) the prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;
(d) principles of child growth and development, including brain development;
(e) positive guidance and interactions with children;
(f) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;
(g) prevention of sudden infant death syndrome (SIDS) and use of safe sleeping practices; and
(h) recognizing the signs of homelessness and available assistance.
(22) At least 5 of the 10 hours of annual child care training shall be face-to-face instruction.
(23) Individuals who are required to receive annual child care training and who begin employment partway through the facility's license year shall complete a proportionate number of training hours including the face-to-face instruction.
(24) Documentation of each individual's annual child care training shall be kept on-site for review by the Department and include the following:
(a) training topic,
(b) date of the training,
(c) whether the training was face-to-face or non-face-to-face instruction,
(d) name of the person or organization that presented the training, and
(e) total hours or minutes of training.
(25) Whenever there are children at the center, there shall be at least one caregiver present who can demonstrate English literacy skills needed to care for children and respond to emergencies.
(26) At least one staff member with a current Red Cross, American Heart Association, or equivalent first aid and infant/child CPR certification shall be present when children are in care:
(a) at the facility,
(b) in each vehicle transporting children, and
(c) at each offsite activity.
(27) CPR certification shall include hands-on testing.
(28) The following records for each covered individual shall be kept on-site for review by the Department:
(a) the date of initial employment or association with the program;
(b) a copy of the current background screening card issued by the Department;
(c) a current first aid and CPR certification, if required in rule; and
(d) a six-week record of the times worked each day.

R381-60-8. Background Screenings.
(1) The provider shall ensure that an online CCL background screening form is submitted within 10 working days from when:
(a) a new covered individual becomes involved with the program,
(b) a new covered individual age 12 years or older begins living in the facility, and
(c) a child who resides in the facility turns 12 years old.
(2) Unless an exception is granted in rule, the provider shall ensure that a CCL background screening for each individual age 18 years or older includes fingerprints and fingerprints fees.
(3) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.
(4) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.
(5) Fingerprints are not required if:
(a) the covered individual has resided in Utah continuously for the past 5 years, or since the individual's 18th birthday and will only be involved with child care in a program that was licensed or certified prior to 1 July 2013; or
(b) the covered individual has previously submitted fingerprints to the Department under this section for a national criminal history record check and has resided in Utah continuously since that time.
(6) Background screenings are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background screening card.
(7) At least 2 weeks before the end of the month that is written on a covered individual's background screening card, the provider shall:
(a) have the individual submit an online CCL background screening form,
(b) authorize the individual's background screening form, and
(c) pay all required fees.
(8) Regardless of any exception in rule, if an in-state criminal background screening indicates that a covered individual age 18 years or older has a background finding, the Department may require that individual to submit fingerprints and fees in order for the Department to conduct a national criminal background screening for that individual.
(9) The following background findings may deny a covered individual from being involved with child care:
(a) LIS supported findings,
(b) the individual's name appears on the Utah or national sex offender registry,
(c) any felony convictions,
(d) any Misdemeanor A convictions, or
(e) Misdemeanor B and C convictions for the reasons listed in R381-60-8(10).
(10) The following convictions, regardless of severity, may result in a background screening denial:

(a) unlawful sale or furnishing alcohol to minors;
(b) sexual enticing of a minor;
(c) cruelty to animals, including dogfighting;
(d) bestiality;
(e) lewdness, including lewdness involving a child;
(f) voyeurism;
(g) providing dangerous weapons to a minor;
(h) a parent providing a firearm to a violent minor;
(i) a parent knowing of a minor's possession of a dangerous weapon;
(j) sales of firearms to juveniles;
(k) pornographic material or performance;
(l) sexual solicitation;
(m) prostitution and related crimes;
(n) contributing to the delinquency of a minor;
(o) any crime against a person;
(p) a sexual exploitation act;
(q) leaving a child unattended in a vehicle; and
(r) driving under the influence (DUI) while a child is present in the vehicle.

(11) A covered individual with a Class A misdemeanor background finding not listed in R381-60-8(10) may be involved with child care when:
(a) 10 or more years have passed since the Class A misdemeanor offense, and
(b) there is no other conviction for the individual in the past 10 years.

(12) A covered individual with a Class A misdemeanor background finding not listed in R381-60-8(10) may be involved with child care for up to 6 months if:
(a) 5 to 9 years have passed since the offense,
(b) there is no other conviction since the Class A misdemeanor offense,
(c) the individual provides to the Department documentation of an active petition for expungement, and
(d) the provider ensures that the individual does not have unsupervised contact with any child in care.

(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.

(14) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background screening was conducted.

(15) The Department may rely on the criminal background screening findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

(16) If the provider has a background screening denial, the Department may suspend or deny their license until the reason for the denial is resolved.

(17) If a covered individual has a background screening denial, the Department may prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

(18) If a covered individual is denied a license or employment based upon the criminal background screening and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(19) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):
(a) the individual cannot appeal the supported finding to the Department of Health, and
(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(20) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

(21) The Executive Director of the Department of Health may overturn a background screening denial under the following conditions:
(a) the background finding is not a felony, and
(b) the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R381-60-9. Facility.

(1) There shall be at least 35 square feet of indoor space for each child in care, including the provider's and employees' children.

(2) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:
(a) by children,
(b) for the care of children, or
(c) to store classroom materials.

(3) The following areas are not included when measuring indoor space for children's use:
(a) bathrooms,
(b) closets and staff lockers,
(c) hallways,
(d) lobbies and entryways,
(e) kitchens, and
(f) staff offices.

(4) The maximum allowed capacity for a child care facility may be limited by local ordinances.

(5) The number of children in care at any given time shall not exceed the capacity identified on the license.

(6) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their local health department within 5 working days and follow required procedures for remediation of the lead hazard.

(7) Each room and indoor area that is used by children shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(8) All rooms and areas shall have adequate light intensity for the safety of the children and the type of activity being conducted.

(9) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(10) There shall be a working telephone at the facility, in each vehicle while transporting children, and during offsite activities.

(11) There shall be a working handwashing sink used exclusively for handwashing.

(12) For preschoolers and toddlers who are toilet trained, there shall be 1 working toilet and 1 working sink for every 15 children in the center. For school-age children, there shall be 1 working toilet and 1 working sink for every 25 children in the center.

(13) A bathroom that provides privacy shall be available for use by school-age children.

(14) If there is an outdoor area used by children, the area shall:
(a) be safely accessible to children;
(b) have at least 40 square feet of space for each child using the area at one time; and
(c) be enclosed within a fence, wall, or solid natural barrier that is at least 4 feet high and that has no gap 5 by 5

inches or greater in or under it.

(15) When children are outdoors:

(a) children shall be in the enclosed area except during offsite activities, and

(b) there shall be shade available to protect the children from excessive sun and heat.

(16) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall meet applicable state and local laws and ordinances related to the operation of a swimming pool and maintain the pool in a safe manner; and

(b) when not in use, the pool shall be enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises, or covered with an approved enclosure that meets the ASTM F1346 standard.

(17) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

(a) ceilings, walls, and floor coverings;

(b) lighting, bathroom, and other fixtures;

(c) draperies, blinds, and other window coverings;

(d) indoor and outdoor play equipment;

(e) furniture, toys, and materials accessible to the children; and

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow, and other hazards.

(18) Accessible raised decks or balconies that are 5 feet or higher, and open basement stairwells that are 5 feet or deeper shall have protective barriers that are at least 3 feet high.

(19) If the facility is subdivided, any part of the building is rented out, or any area of the facility is shared including the outdoor area, the entire facility shall be inspected and covered individuals in the facility shall comply with all rules, except when all of the following conditions are met:

(a) there is a separate entrance for the child care program;

(b) there are no connecting interior doorways that can be used by unauthorized individuals; and

(c) there is no shared access to the outdoor area used for child care, or a qualified caregiver is present when children are using a shared outdoor area of the facility.

R381-60-10. Ratios and Group Size.

(1) As listed in Table 1, the provider shall:

(a) maintain at least the number of caregivers and not exceed the number of children in the caregiver-to-child ratio, and

(b) not exceed maximum group sizes.

TABLE 1

Caregiver-to-Child Ratios

# of Caregivers	# of Children	Limits for Mixed Ages
1	12 per group	No children younger than age 2
1	8 per group	2 children younger than age 2
1	6 in the facility	3 children younger than age 2
2	24 per group	No children younger than age 2
2	16 per group	4 children younger than age 2

(2) Children in care shall include the provider's and caregivers' own children younger than age 4 years old.

(3) The provider's and caregivers' own children age 4 years and older, shall not be counted in the caregiver-to-child ratios and group sizes when the parent of the child is working at the center.

(4) If more than 2 infants or toddlers are included in a mixed-age group, and the group has more than 6 children, there shall be at least 2 caregivers with the group unless there are 6 or fewer children in the facility.

(5) When caring for children younger than age 2 years old in single-age groups:

(a) there shall be no more than 4 children with 1 caregiver, and

(b) these children shall be cared for in an area that is physically separated from older children.

(6) If there is only 1 caregiver in the facility and no children younger than 2 years old are present, the provider can be temporarily out of ratio if:

(a) a second caregiver arrives within 20 minutes from when the 13th child arrived, and

(b) the total number of children present does not exceed 16.

(7) Caregivers who are 16 or 17 years old may be included in the caregiver-to-child ratio, but shall not have unsupervised contact with any child in care.

(8) Volunteers may be included in the caregiver-to-child ratio if they:

(a) are at least 16 years old,

(b) receive at least 2.5 hours of preservice training before counting in the caregiver-to-child ratio, and

(c) complete at least 1/2 hour of child care training for each month they volunteer 40 hours or more.

(9) Student interns who are registered in a high school or college child care course may count in the caregiver-to-child ratio when requirements in R381-60-7(14)(a)-(c) are met.

(10) Guests shall not count in caregiver-to-child ratio.

R381-60-11. Child Supervision and Security.

(1) The provider shall ensure that caregivers provide and maintain active supervision of each child at all times.

(2) Active supervision shall include:

(a) for children younger than 5 years of age, the caregiver shall be physically present in the room or area with the children;

(b) for school-age children, the caregiver shall be able to hear the children and be close enough to intervene;

(c) caregivers shall know the number of children in their care at all times;

(d)caregivers' attention shall be focused on the children and not on caregivers' personal interests;

(e) caregivers shall be aware of the entire group of children even when interacting with a smaller group or an individual child; and

(f) caregivers shall position themselves so all children in their assigned group are actively supervised.

(3) When video cameras and mirrors are used to supervise napping children:

(a) the napping room shall be adjacent to a non-napping room;

(b) there shall be a staff member in the non-napping room;

(c) cameras or mirrors shall be positioned so that every child can be seen;

(d) the staff member shall be able to see and hear each child;

(e) there shall be an open door without a barrier, such as a gate, between the napping room and the non-napping room; and

(f) children who wake up shall be moved to the non-napping room.

(4) A blanket or other item shall not be placed over sleeping equipment in such a way that prevents the caregiver

from seeing the sleeping child.

(5) Whenever a child is in care, the child's parent shall have access to their child and the areas used to care for their child.

(6) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out;

(b) only parents or persons with written authorization from the parent may sign out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, such as a signature, initials, or electronic code;

(e) the sign-in and sign-out records include the date and time each child arrives and leaves; and

(f) there is written permission from their parents if school-age children sign themselves in and out.

(7) In an emergency, the caregiver shall accept the parent's verbal authorization to release a child when the caregiver can confirm the identity of:

(a) the person giving verbal authorization, and

(b) the person picking up the child.

(8) A six-week record of each child's daily attendance, including sign-in and sign-out records, shall be kept on-site for review by the Department.

R381-60-12. Child Guidance and Interaction.

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) The provider shall inform parents, children, and those who interact with the children of the center's behavioral expectations and how any misbehavior will be handled.

(3) Individuals who interact with the children shall guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) Caregivers shall use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others, or from destroying property.

(5) Interactions with the children shall not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort such as hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

(6) Any person who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in Utah Code Section 62A-4a-403 and Section 62A-4a-411.

R381-60-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Harmful objects and hazards, such as the following, shall be inaccessible to children:

(a) poisonous and harmful plants;

(b) sharp objects, edges, corners, or points that could cut or puncture skin;

(c) for children younger than 3 years of age, choking hazards;

(d) strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck;

(e) tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways;

(f) for children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(g) standing water that measures 2 inches or deeper and 5 by 5 inches or greater in diameter.

(3) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(4) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(5) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(6) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(7) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(8) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in center vehicles any time a child is in care.

(9) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(11) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(12) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(13) Infant walkers with wheels shall be inaccessible to children.

(14) In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R381-60-14. Emergency Preparedness and Response.

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center or in an area clearly visible to anyone needing the information.

(2) The provider shall keep first-aid supplies in the center, including at least antiseptic, bandages, and tweezers.

(3) The provider shall conduct fire evacuation drills monthly. Drills shall include a complete exit of all children, staff, and volunteers from the building.

(4) The provider shall document each fire drill, including:

(a) the date and time of the drill,

(b) the number of children participating,

(c) the name of the person supervising the drill,

(d) the total time to complete the evacuation, and

(e) any problems encountered.

(5) The provider shall conduct drills for disasters other than fires at least once every 6 months.

(6) The provider shall document each disaster drill, including:

(a) the type of disaster, such as earthquake, flood, prolonged power or water outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(7) The provider shall vary the days and times on which fire and other disaster drills are held.

(8) The provider shall keep documentation of the previous 12 months of fire and disaster drills on-site for review by the Department.

(9) In case of an emergency or disaster, the provider and employees shall follow procedures as outlined in the center's health and safety plan.

(10) The provider shall give parents a written report of every incident, accident, or injury involving their child:

(a) the caregivers involved, the center director, and the person picking up the child shall sign the report on the day of occurrence; and

(b) if school-age children sign themselves out of the center, a copy of the report shall be sent to the parent on the day of the occurrence or given to the parent the next day the child attends the program.

(11) If a child is injured and the injury appears serious but not life-threatening, the child's parent shall be contacted immediately.

(12) In the case of a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb:

(a) emergency personnel shall be called immediately;

(b) after emergency personnel are called, then the parent shall be contacted; and

(c) if the parent cannot be reached, staff shall try to contact the child's emergency contact person.

(13) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the Department within the next business day of the incident; or

(b) contact the Department within the next business day and submit a completed accident report form within 5 business days of the incident.

(14) The provider shall keep a six-week record of every incident, accident, and injury report on-site for review by the Department.

R381-60-15. Health and Infection Control.

(1) The building, furnishings, equipment, and outdoor area shall be kept clean and sanitary including:

(a) ceilings, walls, and flooring shall be clean and free of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food shall be clean and sanitary;

(c) surfaces used by children shall be free of rotting food or a build-up of food;

(d) the building and grounds shall be free of a build-up of litter, trash, and garbage; and

(e) the facility shall be free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) All toys and materials including those used by infants and toddlers shall be cleaned:

(a) at least weekly or more often if needed,

(b) after being put in a child's mouth and before another child plays with the toy, and

(c) after being contaminated by a body fluid.

(4) Fabric toys and items such as stuffed animals, cloth dolls, pillows, and dress-up clothes shall be machine washable and washed weekly, and as needed.

(5) Highchair trays shall be cleaned and sanitized before each use.

(6) Water play tables or tubs shall be cleaned and sanitized daily, if used by the children.

(7) Bathroom surfaces including toilets, sinks, faucets, and counters shall be cleaned and sanitized each day.

(8) Potty chairs shall be cleaned and sanitized after each use.

(9) Toilet paper shall be accessible to children and kept in a dispenser.

(10) The provider shall post handwashing procedures that are readily visible from each handwashing sink and shall ensure that the procedures are followed.

(11) Staff and volunteers shall wash their hands thoroughly with liquid soap and running water at required times including:

(a) before handling or preparing food or bottles,

(b) before and after eating meals and snacks or feeding a child,

(c) after using the toilet or helping a child use the toilet,

(d) after contact with a body fluid,

(e) when coming in from outdoors, and

(f) after cleaning up or taking out garbage.

(12) Caregivers shall teach children how to wash their hands thoroughly and shall oversee handwashing whenever possible.

(13) The provider shall ensure that children wash their hands thoroughly with liquid soap and running water at required times including:

(a) before and after eating meals and snacks,

(b) after using the toilet,

(c) after contact with a body fluid,

(d) before using a water play table or tub, and

(e) when coming in from outdoors.

(14) Only single-use towels from a covered dispenser or an electric hand dryer may be used to dry hands.

(15) Personal hygiene items, such as toothbrushes, combs, and hair accessories, shall not be shared and shall be stored so they do not touch each other, or they shall be sanitized between each use.

(16) Pacifiers, bottles, and nondisposable drinking cups shall:

(a) be labeled with each child's name or individually identified; and

(b) not shared, or washed and sanitized before being used by another child.

(17) A child's clothing shall be promptly changed if the child has a toileting accident.

(18) Children's clothing that is wet or soiled from a

body fluid shall:
(a) not be rinsed or washed at the center,
(b) be placed in a leakproof container that is labeled with the child's name, and
(c) be returned to the parent.
(19) Staff shall use a portable body fluid cleanup kit for cleaning up body fluid spills. The kit shall be:
(a) in a place easily accessed by staff, and
(b) restocked as needed.
(20) Staff shall take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, or vomit. Except for diaper changes and toileting accidents, staff shall:
(a) wear waterproof gloves;
(b) clean the surface using a detergent solution;
(c) rinse the surface with clean water;
(d) sanitize the surface;
(e) throw away in a leakproof plastic bag the disposable materials, such as paper towels, that were used to clean up the body fluid;
(f) wash and sanitize any nondisposable materials used to clean up the body fluid, such as cleaning cloths, mops, or reusable rubber gloves, before reusing them; and
(g) wash their hands after cleaning up the body fluid.
(21) When any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the illness is discovered.
(22) The provider shall post a notice at the center when any staff member or child has an infectious disease or parasite. The notice shall:
(a) not disclose any personal identifiable information,
(b) be posted in a conspicuous place where it can be seen by all parents,
(c) be posted and dated on the same day that the disease or parasite is discovered, and
(d) remain posted for at least 5 days.
(23) To prevent contamination of food, the spread of foodborne illnesses, and other diseases, individuals with an infectious disease or showing symptoms such as diarrhea, fever, and vomit shall not prepare or serve foods.

R381-60-16. Food and Nutrition.
If food service is provided:
(1) The provider shall ensure that each child age 2 years and older who is in care for 3 hours or more is offered a meal or snack at least once every 3 hours.
(2) When food for children's meals and/or snacks is supplied by the provider the meal service shall meet local health department food service regulations.
(3) The person who serves food to children shall:
(a) be aware of the children in their assigned group who have food allergies or sensitivities, and
(b) ensure that the children are not served the food or drink they are allergic or sensitive to.
(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.
(5) Food and drink brought in by parents for their child's use shall be:
(a) labeled with the child's name,
(b) refrigerated if needed, and
(c) consumed only by that child.

R381-60-17. Medications.
(1) Nonrefrigerated medications shall be stored at least 48 inches above the floor or shall be locked.
(2) Refrigerated medications shall be stored at least 36 inches above the floor or shall be locked, and if liquid, they shall be stored in a separate leakproof container.
(3) All over-the-counter and prescription medications supplied by parents shall:
(a) be labeled with the child's full name,
(b) be kept in the original or pharmacy container,
(c) have the original label, and
(d) have child-safety caps.
(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.
(5) The medication permission form shall include:
(a) the name of the child,
(b) the name of the medication,
(c) written instructions for administration, and
(d) the parent signature and the date signed.
(6) The instructions for administering the medication shall include:
(a) the dosage,
(b) how the medication will be given,
(c) the times and dates to administer the medication, and
(d) the disease or condition being treated.
(7) If the provider supplies an over-the-counter medication for children's use, the medication shall not be administered to any child without previous parental consent for each instance it is given. The consent shall be:
(a) prior written consent; or
(b) verbal consent if the date and time of the consent is documented, and is signed by the parent upon picking up their child.
(8) The caregiver administering the medication shall:
(a) wash their hands,
(b) check the medication label to confirm the child's name if the parent supplied the medication,
(c) check the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer, and
(d) administer the medication.
(9) Immediately after administering a medication, the caregiver giving the medication shall record the following information:
(a) the date, time, and dosage of the medication given;
(b) any errors in administration or adverse reactions; and
(c) their signature or initials.
(10) The provider shall report a child's adverse reaction to a medication or error in administration to the parent immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.
(11) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication before the time the medication needs to be given.
(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the Department.

R381-60-18. Activities.
(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.
(2) If an approved outdoor area is available, daily activities shall include outdoor play as weather and air quality allow.
(3) Physical development activities shall include light, moderate, and vigorous physical activity for a daily total of at

least 15 minutes for every 2 hours children spend in the program.

(4) Toys, materials, and equipment needed to support children's healthy development shall be available to the children.

(5) Except for occasional special events, children's screen time on media such as television, cell phones, tablets, and computers shall:

(a) not be allowed for children 0 to 17 months old;

(b) be limited for children 18 months to 4 years old to 1 hour per day, or 5 hours per week with a maximum screen time of 2 hours per activity; and

(c) be part of a media plan that addresses the needs of children 5 to 12 years old.

(6) If swimming activities are offered or if wading pools are used:

(a) the provider shall obtain parental permission before each child in care uses the pool;

(b) caregivers shall stay at the pool supervising whenever a child is in the pool or has access to the pool, and whenever a wading pool has water in it;

(c) diapered children shall wear swim diapers whenever they are in the pool;

(d) wading pools shall be emptied and sanitized after use by each group of children;

(e) if the pool is over 4 feet deep, there shall be a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(f) lifeguards and pool personnel shall not count toward the caregiver-to-child ratio.

(7) If offsite activities are offered:

(a) the provider shall obtain written parental consent before each activity;

(b) the required caregiver-to-child ratio and supervision shall be maintained during the entire activity;

(c) a first aid kit shall be available;

(d) children shall wear or carry with them the name and phone number of the center;

(e) children's names shall not be used on nametags, t-shirts, or in other visible ways; and

(f) there shall be a way for caregivers and children to wash their hands with soap and water, or if there is no source of running water, caregivers and children shall clean their hands with wet wipes and hand sanitizer.

(8) On every offsite activity, caregivers shall take the written emergency information and releases for each child in the group. The information shall include:

(a) the child's name,

(b) the parent's name and phone number,

(c) the name and phone number of a person to notify in case of an emergency if the parent cannot be contacted,

(d) the names of people authorized by the parents to pick up the child, and

(e) current emergency medical treatment and emergency medical transportation releases.

R381-60-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) The designated play surface on stationary play equipment used by infants or toddlers shall not exceed 3 feet in height.

(3) Swings used by infants or toddlers shall have enclosed seats.

(4) Stationary play equipment shall have a surrounding use zone that extends from the outermost edge of the equipment. With the exception of swings, stationary play equipment that is:

(a) used by infants or toddlers shall have at least a 3-foot use zone if any designated play surface is higher than 18 inches,

(b) used by preschoolers shall have at least a 6-foot use zone if any designated play surface is higher than 20 inches, and

(c) used by school-age children shall have at least a 6-foot use zone if any designated play surface is higher than 30 inches.

(5) The use zone in the front and rear of a single-axis, enclosed swing shall extend at least twice the distance of the swing pivot point to the swing seat.

(6) The use zone in the front and rear of a single-axis swing shall extend at least twice the distance of the swing pivot point to the ground.

(7) The use zone for the sides of a single-axis swing shall extend:

(a) at least 3 feet from the outermost edge of the swing if used by infants or toddlers, or

(b) at least 6 feet from the outermost edge of the swing if used by preschoolers or school-age children.

(8) The use zone for a multi-axis swing, such as a tire swing, shall extend:

(a) at least the measurement of the suspending rope or chain plus 3 feet, if the swing is used by infants or toddlers; or

(b) at least the measurement of the suspending rope or chain plus 6 feet, if the swing is used by preschoolers or school-age children.

(9) The use zone for a merry-go-round shall extend:

(a) at least 3 feet in all directions from its outermost edge if the merry-go-round is used by infants or toddlers, or

(b) at least 6 feet in all directions from its outermost edge if the merry-go-round is used by preschoolers or school-age children.

(10) The use zone for a spring rocker shall extend:

(a) at least 3 feet from the outermost edge of the rocker when at rest; or

(b) at least 6 feet from the outermost edge of the rocker when at rest if the seat is higher than 20 inches, and the rocker is used by preschoolers or school-age children.

(11) The following use zones shall not overlap the use zone of any other piece of play equipment:

(a) the use zone in front of a slide;

(b) the use zone in the front and rear of any single-axis swing, including a single-axis enclosed swing;

(c) the use zone of a multi-axis swing; and

(d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.

(12) Unless prohibited in R381-60-19(11), the use zones of play equipment may overlap when:

(a) the equipment is used by infants or toddlers, and there is at least 3 feet between the pieces of equipment; or

(b) the equipment is used by preschoolers or school-age children and there is at least 6 feet between the pieces of equipment if the designated play surface is 30 inches or lower, or there is at least 9 feet between the pieces of equipment if the designated play surface is higher than 30 inches.

(13) Stationary play equipment without moving parts children sit or stand on shall not be placed on concrete, asphalt, dirt, a bare floor, or any other hard surface, but may be placed on grass or other cushioning, if the highest designated play surface measures between:

(a) 6 to 18 inches if used by infants or toddlers,

(b) 6 to 20 inches if used by preschoolers, and

(c) 6 to 30 inches if used by school-age children.

(14) Protective cushioning shall cover the entire surface

of each required use zone and its depth or thickness shall be determined by the highest designated play surface of the equipment.

(15) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 2.

(a) the provider shall ensure that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 2 if compacted; and

(b) if the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 2

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 7'	9"	not allowed	9"	not allowed	6"
Over 7' up to 8'	9"	not allowed	9"	not allowed	6"
Over 8' up to 9'	9"	not allowed	9"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	9"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(16) If shredded wood products are used as protective cushioning:

(a) the provider shall keep on-site for review by the Department documentation from the manufacturer that the wood product meets ASTM Specification F1292,

(b) there shall be adequate drainage under the material, and

(c) the depth of the shredded wood shall meet the CPSC guidelines in Table 3.

TABLE 3

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	9"	9"	9"
Over 8' up to 9'	9"	9"	9"
Over 9' up to 10'	9"	9"	9"
Over 10' up to 11'	9"	9"	9"
Over 11'	9"	not allowed	not allowed

(17) If a unitary cushioning is used, the provider shall ensure that the material meets the standard established in ASTM Specification F1292. The provider shall maintain on-site for review by the Department documentation from the manufacturer that the material meets these specifications.

(18) If a unitary cushioning is used, the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(19) A play equipment platform that is more than 18 inches above the floor or ground and used by infants or toddlers shall have a protective barrier that is at least 24 inches high.

(20) A play equipment platform that is more than 30 inches above the floor or ground and used by preschoolers shall have a protective barrier that is at least 29 inches high.

(21) A play equipment platform that is more than 48 inches above the floor or ground and used by school-age children shall have a protective barrier that is at least 38 inches high.

(22) There shall be no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(23) Stationary play equipment shall be stable and securely anchored.

(24) There shall be no trampolines on the premises that are accessible to any child in care.

(25) There shall be no heavy metal swings, such as animal-shaped swings, accessible to children.

(26) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(27) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(28) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(29) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

R381-60-20. Transportation.

If transportation services are offered:

(1) For each child being transported, the provider shall have a transportation permission form:

(a) signed by the parent, and

(b) on-site for review by the Department.

(2) Each vehicle used for transporting children shall:

(a) be enclosed with a roof or top,

(b) be equipped with safety restraints,

(c) have a current vehicle registration,

(d) be maintained in a safe and clean condition,

(e) contain a first aid kit, and

(f) contain a body fluid clean up kit.

(3) The safety restraints in each vehicle that transports children shall:

(a) be appropriate for the age and size of each child who is transported, as required by Utah law;

(b) be properly installed; and

(c) be in safe condition and working order.

(4) The driver of each vehicle who is transporting children shall:

(a) be at least 18 years old;

(b) have and carry with them a current, valid driver's license for the type of vehicle being driven;

(c) have with them the written emergency contact information for each child being transported;

(d) ensure that each child being transported is in an individual safety restraint that is used according to Utah law;

(e) ensure that the inside vehicle temperature is between 60-85 degrees Fahrenheit;

(f) never leave a child in the vehicle unattended by an adult;

(g) ensure that children stay seated while the vehicle is moving;

(h) never leave the keys in the ignition when not in the

driver's seat; and

(i) ensure that the vehicle is locked during transport.

(5) When the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:

(a) each child being transported has a completed transportation permission form signed by their parent,

(b) a caregiver goes with the children and actively supervises them,

(c) the caregiver-to-child ratio is maintained, and

(d) caregivers take each child's written emergency contact information and releases with them.

R381-60-21. Animals.

(1) The provider shall inform parents of the kinds of animals allowed at the facility.

(2) There shall be no animal on the premises that:

(a) is naturally aggressive;

(b) has a history of dangerous, attacking, or aggressive behavior; or

(c) has a history of biting even one person.

(3) Animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.

(4) There shall be no animal or animal equipment in food preparation or eating areas.

(5) Children younger than 5 years of age shall not assist with the cleaning of animals or animal cages, pens, or equipment.

(6) If school-age children help in the cleaning of animals or animal equipment, the children shall wash their hands immediately after cleaning the animal or equipment.

(7) Children and staff shall wash their hands immediately after playing with or touching animals, including reptiles and amphibians.

(8) Dogs, cats, and ferrets that are housed at the facility shall have current rabies vaccinations.

(9) The provider shall keep current animal vaccination records on-site for review by the Department.

R381-60-22. Rest and Sleep.

If sleeping equipment is used for rest and sleep time:

(1) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.

(2) Sleeping equipment shall be kept in good repair, including mats and mattresses that shall have smooth, waterproof surfaces.

(3) Each crib shall:

(a) have a tight-fitting mattress;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance;

(d) not have strings, cords, ropes, or other entanglement hazards on the crib or within reach of the child; and

(e) meet CPSC standards.

(4) When in use, sleeping equipment such as cribs, cots, and mats shall be placed at least 2 feet apart.

(5) Sleeping equipment shall not block exits.

(6) Sleeping equipment shall be cleaned and sanitized before each use.

R381-60-23. Diapering.

If the provider accepts children who wear diapers:

(1) The provider shall post diapering procedures at each diapering station and ensure that they are followed.

(2) Caregivers shall ensure that each child's diaper is:

(a) checked at least once every 2 hours,

(b) promptly changed when wet or soiled, and

(c) checked as soon as a sleeping child awakens.

(3) The diapering area shall not be located in a food preparation or eating area.

(4) Caregivers shall change children's diapers at a diapering station. Diapers shall not be changed on surfaces used for any other purpose.

(5) The diapering surface shall be smooth, waterproof, and in good repair.

(6) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.

(7) Caregivers shall not leave children unattended on the diapering surface.

(8) Caregivers shall clean and sanitize the diapering surface after each diaper change, or use a disposable, waterproof diapering surface that is thrown away after each diaper change.

(9) Caregivers shall wash their hands after each diaper change.

(10) Caregivers shall place wet and soiled disposable diapers:

(a) in a container that has a disposable plastic lining and a tight-fitting lid,

(b) directly in an outdoor garbage container that has a tight-fitting lid, or

(c) in a container that is inaccessible to children.

(11) Indoor containers where wet and soiled diapers are placed shall be cleaned and sanitized each day.

(12) If cloth diapers are used:

(a) they shall not be rinsed at the facility; and

(b) they shall be placed directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or placed in a leakproof diapering service container.

R381-60-24. Infant and Toddler Care.

If the provider cares for infants or toddlers:

(1) Each awake infant and toddler shall receive positive physical and verbal interaction with a caregiver at least once every 20 minutes.

(2) To stimulate their healthy development, the provider shall ensure that infants receive daily interactions with adults; including on the ground interaction and closely supervised time spent in the prone position for infants less than 6 months of age.

(3) Caregivers shall respond promptly to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, a wet or soiled diaper, fear, teething, or illness.

(4) For their healthy development, safe toys shall be available for infants and toddlers. There shall be enough toys accessible to each infant and toddler in the group to engage in play.

(5) Mobile infants and toddlers shall have freedom of movement in a safe area.

(6) An awake infant or toddler shall not be confined for more than 30 minutes in any piece of equipment, such as a swing, high chair, crib, playpen, or other similar piece of equipment.

(7) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(8) Infants and toddlers shall not have access to objects made of styrofoam.

(9) Each infant and toddler shall be allowed to eat and sleep on their own schedule.

(10) Baby food, formula, or breast milk that is brought from home for an individual child's use shall be:

(a) labeled with the child's name;

(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated if needed; and

(d) discarded within 24 hours of preparation or opening, except for unprepared powdered formula or dry food.

(11) If an infant is unable to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(12) The caregiver shall swirl and test warm bottles for temperature before feeding to children.

(13) Formula and milk, including breast milk, shall be discarded after feeding or within 2 hours of starting a feeding.

(14) Caregivers shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter, and shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(15) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. An infant shall not be placed to sleep on a mat, cot, pillow, bouncer, swing, car seat, or other similar piece of equipment unless the provider has written permission from the infant's parent.

(16) Infants shall be placed on their backs for sleeping unless there is documentation from a health care provider requiring a different sleep position.

KEY: child care facilities, hourly child care centers
December 28, 2017 26-39-203(1)(a)

R381. Health, Child Care Center Licensing Committee.
R381-70. Out of School Time Child Care Programs.
R381-70-1. Legal Authority and Purpose.

(1) This rule is enacted and enforced in accordance with Utah Code, Title 26, Chapter 39.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in out-of-school-time programs and defines the general procedures and requirements to obtain and maintain a license.

R381-70-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background screening that may result in a denial from Child Care Licensing.

(4) "Background Screening Denial" means that an individual has failed the background screening and is prohibited from being involved with a program licensed by Child Care Licensing.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Capacity" means the maximum number of children allowed in the program at any given time.

(8) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(9) "Child Care Center Licensing Committee" means the Child Care Center Licensing Committee created in the Utah Child Care Licensing Act.

(10) "Conditional Status" means that the provider is at risk of losing their license because compliance with licensing rules has not been maintained.

(11) "Covered Individual" means any of the following individuals involved with the program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(f) a volunteer, except a parent of a child enrolled in the program; and

(h) anyone who has unsupervised contact with a child in the program.

(12) "CPSC" means the Consumer Product Safety Commission.

(13) "Department" means the Utah Department of Health.

(14) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(15) "Director" means a person who meets the director qualifications in this rule, and who assumes the day-to-day responsibilities for compliance with Child Care Licensing rules.

(16) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(17) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(18) "Facility" means a program or the premises approved by the Department and licensed by Child Care Licensing.

(19) "Group" means the children who are assigned to and supervised by one or more staff members.

(20) "Group Size" means the number of children in a group.

(21) "Guest" means an individual who is not a covered individual and is at the facility with the provider's permission.

(22) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(23) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(24) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a safety device;

(c) behind a properly secured safety gate;

(d) located in a cupboard or on a shelf that is at least 48 inches above the floor; or

(e) in a bathroom, locked or secured with a safety device.

(25) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(26) "Involved with Children" means to do any of the following at or for an out-of-school-time program licensed by Child Care Licensing:

(a) supervise or be assigned to work with children in the program;

(b) volunteer at an out-of-school-time program;

(c) own, operate, direct, or be employed at an out-of-school-time program;

(d) reside at a facility where an out-of-school-time program operates; or

(e) be present at a facility while an out-of-school-time program operates, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the program's facility.

(27) "License" means a license issued by the Department to provide out-of-school-time program services.

(28) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(29) "LIS Supported Finding" means background screening information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(30) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(31) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

(32) "Parent" means the parent or legal guardian of a child in the program.

(33) "Person" means an individual or a business entity.

(34) "Physical Abuse" means causing nonaccidental physical harm to a child.

(35) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

(36) "Protective Barrier" means a structure such as bars,

lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

(37) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

(38) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(39) "Qualifying Child" means:

(a) a child who is between 5 and 13 years old and is the child of a person other than the provider or a staff member, and

(b) a child with a disability who is between 5 and 18 years old and is the child of a person other than the provider or a staff member.

(40) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(41) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(42) "School-Age Child" means a child age 5 through 12 years old.

(43) "Services" means the supervision and response to the needs of 5 or more qualifying children:

(a) in the absence of the children's parents,

(b) in a place other than the provider's home or the child's home,

(c) for less than 24 hours a day, and

(d) for direct or indirect compensation.

(44) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(45) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(46) "Staff-to-Child Ratio" means the number of staff responsible for a specific number of children.

(47) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(48) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as a protruding S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(49) "Substitute" means an individual who temporarily assumes the responsibilities to supervise and work with the children when the assigned staff member is not present.

(50) "Unrelated Child" means a child who is not a "related child" as defined in R381-70-2(40).

(51) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a staff member who is at least 18 years old and has passed a Child Care Licensing background screening.

(52) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(53) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(54) "Working Days" means the days of the week the Department is open for business.

R381-70-3. License Required.

(1) A person or persons shall be licensed as an out-of-school-time program if they provide services:

(a) in the absence of the child's parent;

(b) in a place other than the provider's home or the child's home;

(c) for 5 or more qualifying children;

(d) for each individual child for less than 24 hours per day;

(e) on an ongoing basis, on 3 or more days a week and for 30 or more days in a calendar year;

(f) either for 2 or more hours per day on days when school is in session for the child receiving services and 4 or more hours per day on days when school is not in session for the children receiving services, or the provider offers services for 4 or more hours per day on days when school is not in session for the children receiving services;

(g) to children who are at least 5 years of age; and

(h) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who serves related children only, or

(b) a person who provides services on a sporadic basis only.

(3) According to Foster Care Services rule R501-12-4(8)(f), a provider may not be licensed to provide child services in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

R381-70-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of the educational credentials of the person who will be the director as required in R381-70-7(4);

(f) a copy of a completed Department health and safety plan;

(g) CCL background screenings for all covered individuals as required in R381-70-8;

(h) a current copy of the Department's new provider training certificate of attendance; and

(i) all required fees, which are nonrefundable.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;

(c) exit doors shall operate properly and shall be well

maintained;

(d) obstructions in exits, aisles, corridors, and stairways shall be removed;

(e) items stored under exit stairs shall be removed;

(f) exit doors shall be unlocked from the inside during business hours;

(g) exits shall be clearly identified;

(h) there shall be unobstructed fire extinguishers that are of an X minimum rate and appropriate to the type of hazard, currently charged and serviced, and mounted not more than 5 feet above the floor;

(i) there shall be working smoke detectors that are properly installed on each level of the building; and

(j) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the provider serves food and the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) cooks shall use hair restraints and wear clean outer clothing;

(f) according to Food Code 2-103-11, only necessary staff shall be present in the kitchen;

(g) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(h) chemicals shall be stored away from food and food service items;

(i) food shall be properly stored, kept to the proper temperature, and in good condition; and

(j) there shall be a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure; or

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer providing services.

(11) The provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

(a) a change of the facility's location, or

(b) a change that transfers 50 percent or more ownership or controlling interest to a new individual or entity.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where services are provided;

(b) a change in the name of the program;

(c) a change in the regulation category of the program;

(d) a change in the name of the provider;

(e) an addition or loss of a director; or

(f) a change in ownership that does not require a new license.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R381-70-5. Rule Violations and Penalties.

(1) The Department may place a program's license on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The Department shall establish the length of the conditional status and set the conditions that the provider shall satisfy to remove the conditional status.

(3) The Department may increase monitoring of the program that is on conditional status to verify compliance

with rules.

(4) The Department may deny or revoke a license if the provider:

(a) fails to meet the conditions of a license on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) misrepresents information by intentionally altering a license or any other document issued by the Department;

(e) refuses to allow authorized representatives of the Department access to the facility to ensure compliance with rules;

(f) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude a person from having a license.

(5) Within 10 working days of receipt of a revocation notice, the provider shall submit to the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the revocation.

(6) The Department may order the immediate closure of a facility if conditions create a clear and present danger to any child and may require immediate action to protect their health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child who is participating in the program, the Department may order the provider to suspend services and/or prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

(9) If a person is providing out-of-school-time services for more than 4 unrelated children without the appropriate license, the Department may:

(a) issue a cease and desist order, or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a license,

(ii) conditions do not create a clear and present danger to the children being served, and

(iii) the person agrees to apply for the appropriate license within 30 calendar days of notification by the Department.

(10) If a person providing out-of-school-time program services without the appropriate license agrees to apply for a license but does not submit an application and all required application documents within 30 days, the Department shall issue a cease and desist order.

(11) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code, Section 26-39-601.

(12) Assessment of any civil money penalty does not prevent the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license

(13) Assessment of any administrative civil money penalty under this section does not prevent court-ordered or other equitable remedies.

(14) The Department may deny an application or revoke a license for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional inspections, conditional monitoring inspections, background screenings, civil money penalties, and other fees assessed by the Department.

(15) An applicant or provider may appeal any Department decision within 30 days of being informed of the decision.

R381-70-6. Administration and Children's Records.

(1) The provider shall:

(a) be at least 21 years of age,

(b) pass a CCL background screening, and

(c) complete the new provider training offered by the Department.

(2) If the owner is not a sole proprietor, the business entity shall submit to the Department the name(s) and contact information of the individual(s) who shall legally represent them and who shall comply with the requirements stated in R381-70-6(1).

(3) The provider shall not engage in or allow conduct that endangers children being served; or is contrary to the health, morals, welfare, and safety of the public.

(4) The provider shall have knowledge of and comply with all federal, state, and local laws, ordinances, and rules, and shall be responsible for the operation and management of an out-of-school-time program.

(5) The provider shall comply with licensing rules at all times when a qualifying child is present.

(6) The provider shall post the original license on the facility premises in a place readily visible and accessible to the public.

(7) The provider shall post a copy of the Department's Parent Guide at the facility for parent review during business hours.

(8) The provider shall inform parents and the Department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(9) The provider shall establish, follow, and ensure that all staff and volunteers follow a written health and safety plan that is:

(a) completed on the Department's required form;

(b) submitted to the Department for initial approval and any time changes are made to the plan;

(c) reviewed and updated as needed;

(d) signed and dated at least annually; and

(e) available for review by parents, staff, and the Department during business hours.

(10) The provider shall ensure that each parent completes an admission and health assessment form for their child before the child is admitted into the program.

(11) The admission and health assessment form shall include the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of people authorized by the parent to pick up the child;

(e) name, address, and phone number of a person to be contacted in case of an emergency if the provider is unable to contact the parent;

(f) if available, the name, address, and phone number of an out-of-area emergency contact person for the child;

(g) current emergency medical treatment and emergency transportation releases with the parent's signature;

(h) any known allergies of the child;

(i) any known food sensitivities of the child;

(j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health

needs of the child;

(l) current ongoing medications that the child may be taking; and

(m) any other special health instructions for the staff.

(12) The admission and health assessment form shall:

(a) be reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the Department.

(13) Each child's information shall be kept confidential and shall not be released without written parental permission.

R381-70-7. Personnel and Training Requirements.

(1) The provider shall train and supervise staff and volunteers to ensure that they are qualified to:

(a) meet the needs of the children as required by rule, and

(b) be in compliance with all licensing rules.

(2) The provider shall ensure that the program has a qualified director as required by licensing rules.

(3) The director shall:

(a) be at least 21 years of age;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) complete the new director training offered by the Department within 60 working days of assuming director duties;

(e) have knowledge of and follow all applicable laws and rules; and

(f) complete at least 10 hours of training each year, based on the facility's license date.

(4) New directors shall have one of the following educational credentials:

(a) any bachelor's or higher education degree, and at least 60 clock hours of approved Utah Early Childhood Career Ladder courses in child development, social/emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the Department;

(b) at least 12 college credit hours of child development courses, elementary education, or related field;

(c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other equivalent credential as approved by the Department;

(d) at least a Level 9 from the Utah Early Childhood Career Ladder system; or

(e) a National Administrator Credential (NAC) and at least 60 clock hours of approved Utah Early Childhood Career Ladder courses in child development, social/emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the Department.

(5) The director shall be on duty at the facility for at least 50% of the time the program is open for business and have sufficient freedom from other responsibilities to manage the program and respond to emergencies.

(6) The director shall arrange for a designee who shall have authority to act on behalf of the director in the director's absence.

(7) The director designee shall:

(a) be at least 21 years of age;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 10 hours of training each year, based on the facility's license date.

(8) The director or the director designee shall be present at the facility whenever the program is open for business.

(9) Staff working with the children shall:

(a) be at least 16 years old;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before working with children;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 10 hours of training each year, based on the facility's license date.

(10) Substitutes shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) be capable of providing out-of-school-time program services, including supervising children, and handling emergencies in the staff member's absence;

(d) receive at least 2.5 hours of preservice training before working with children; and

(e) complete at least 1/2 hour of child related training for each month they work 40 hours or more.

(11) All other staff such as drivers, cooks, and clerks shall:

(a) pass a CCL background screening,

(b) receive at least 2.5 hours of preservice training before beginning job duties, and

(c) have knowledge of and follow all applicable laws and rules.

(12) Volunteers shall:

(a) pass a CCL background screening, and

(b) not have unsupervised contact with any child in the program if the volunteer is younger than 18 years of age.

(13) Guests:

(a) shall not have unsupervised contact with any child in the program,

(b) shall wear a guest nametag, and

(c) are not required to pass a CCL background screening.

(14) Student interns who are registered and participating in a high school or college child care course:

(a) are not required to pass a CCL background screening,

(b) shall not have unsupervised contact with any child in the program, and

(c) shall wear a guest nametag.

(15) Parents of children enrolled in the program:

(a) shall not have unsupervised contact with any child in the program except their own, and

(b) do not need a CCL background screening unless involved with children in the program.

(16) Household members who are:

(a) 12 to 17 years old shall pass a CCL background screening;

(b) 18 years of age or older shall pass a CCL background screening that includes fingerprints; and

(c) younger than 18 years of age shall not have unsupervised contact with any child in the program including during offsite activities and transportation.

(17) Individuals who provide IEP or IFSP services such as physical, occupational, or speech therapists:

(a) are not required to have a CCL background screening as long as the child's parent has given permission for services to take place at the facility; and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(18) Members from law enforcement or from Child Protective Services:

(a) are not required to have a CCL background screening, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(19) Preservice training shall include the following:

(a) job description and duties;

(b) current Department rule sections R381-70-7 through 21;

(c) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(d) prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(e) recognizing the signs of homelessness and available assistance;

(f) a review of the information in each child's health assessment in the staff member's assigned group; and

(g) an introduction and orientation to the children being served.

(20) Documentation of each individual's preservice training shall be kept on-site for review by the Department and include the following:

(a) training topics,

(b) date of the training, and

(c) total hours or minutes of training.

(21) Annual training shall include the following topics:

(a) current Department rule sections R381-70-7 through 21;

(b) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(c) the prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(d) principles of child growth and development, including brain development;

(e) positive guidance and interactions with children; and

(f) recognizing the signs of homelessness and available assistance.

(22) At least half of the annual training hours shall be face-to-face instruction.

(23) Individuals who are required to receive annual training and who begin employment partway through the facility's license year shall complete a proportionate number of training hours including the face-to-face instruction.

(24) Documentation of each individual's annual training shall be kept on-site for review by the Department and include the following:

(a) training topic,

(b) date of the training,

(c) whether the training was face-to-face or non-face-to-face instruction,

(d) name of the person or organization that presented the training, and

(e) total hours or minutes of training.

(25) Whenever there are children at the facility, there shall be at least one staff member present who can demonstrate English literacy skills needed to work with the children and respond to emergencies.

(26) At least one staff member with a current Red Cross, American Heart Association, or equivalent first aid and infant/child CPR certification shall be present when children are receiving services:

(a) at the facility,

(b) in each vehicle transporting children, and

(c) at each offsite activity.

(27) CPR certification shall include hands-on testing.

(28) The following records for each covered individual shall be kept on-site for review by the Department:

(a) the date of initial employment or association with the program;

(b) a copy of the current background screening card issued by the Department;

(c) a current first aid and CPR certification, if required in rule; and

(d) a six-week record of the times worked each day.

R381-70-8. Background Screenings.

(1) The provider shall ensure that an online CCL background screening form is submitted within 10 working days from when:

(a) a new covered individual becomes involved with the program,

(b) a new covered individual age 12 years or older begins residing in the facility, and

(c) a child who resides in the facility turns 12 years old.

(2) Unless an exception is granted in rule, the provider shall ensure that a CCL background screening for all individuals age 18 or older includes fingerprints and fingerprints fees.

(3) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(4) If fingerprints are submitted through LiveScan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(5) Fingerprints are not required if:

(a) the covered individual has resided in Utah continuously for the past 5 years, or since the individual's 18th birthday and will only be involved with a program that was licensed or certified prior to 1 July 2013; or

(b) the covered individual has previously submitted fingerprints to the Department under this section for a national criminal history record check and has resided in Utah continuously since that time.

(6) Background screenings are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background screening card.

(7) At least 2 weeks before the end of the month that is written on a covered individual's background screening card, the provider shall:

(a) have the individual submit an online CCL background screening form,

(b) authorize the individual's background screening form, and

(c) pay all required fees.

(8) Regardless of any exception in rule, if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit fingerprints and fees in order for the Department to conduct a national criminal background screening for that individual.

(9) The following background findings may deny a covered individual from being involved with children:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions,

(d) any Misdemeanor A convictions, or

(e) Misdemeanor B and C convictions for the reasons listed in R381-70-8(10).

(10) The following convictions, regardless of severity, may result in a background screening denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;
(j) sales of firearms to juveniles;
(k) pornographic material or performance;
(l) sexual solicitation;
(m) prostitution and related crimes;
(n) contributing to the delinquency of a minor;
(o) any crime against a person;
(p) a sexual exploitation act;
(q) leaving a child unattended in a vehicle; and
(r) driving under the influence (DUI) while a child is present in the vehicle.

(11) A covered individual with a Class A misdemeanor background finding not listed in R381-70-8(10) may be involved with children when:
(a) 10 or more years have passed since the Class A misdemeanor offense, and
(b) there is no other conviction for the individual in the past 10 years.

(12) A covered individual with a Class A misdemeanor background finding not listed in R381-70-8(10) may be involved with children for up to 6 months if:
(a) 5 to 9 years have passed since the offense,
(b) there is no other conviction since the Class A misdemeanor offense,
(c) the individual provides to the Department documentation of an active petition for expungement, and
(d) the provider ensures that the individual does not have unsupervised contact with any child in the program.

(13) If a petition for expungement is denied, the covered individual shall no longer be involved with children.

(14) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background screening was conducted.

(15) The Department may rely on the criminal background screening findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

(16) If the provider has a background screening denial, the Department may suspend or deny their license until the reason for the denial is resolved.

(17) If a covered individual has a background screening denial, the Department may prohibit that individual from being employed by the program or residing at the facility until the reason for the denial is resolved.

(18) If a covered individual is denied a license or employment based upon the criminal background screening and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(19) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):
(a) the individual cannot appeal the supported finding to the Department of Health; and
(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(20) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

(21) The Executive Director of the Department of Health may overturn a background screening denial under the following conditions:
(a) the background finding is not a felony, and
(b) the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R381-70-9. Facility.

(1) There shall be at least 35 square feet of indoor space for each child receiving services, including the provider's and employees' children.

(2) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:
(a) by children,
(b) for the children, or
(c) to store classroom materials.

(3) The following areas are not included when measuring indoor space for children's use:
(a) bathrooms,
(b) closets and staff lockers,
(c) hallways,
(d) lobbies and entryways,
(e) kitchens, and
(f) staff offices.

(4) The maximum allowed capacity for a facility may be limited by local ordinances.

(5) The number of children being served at any given time shall not exceed the capacity identified on the license.

(6) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their local health department within 5 working days and follow required procedures for remediation of the lead hazard.

(7) Each room and indoor area that is used by children shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(8) Windows and glass doors within 36 inches from the floor or ground shall be made of safety or tempered glass, or have a protective guard.

(9) All rooms and areas that are used by children shall have adequate light intensity for the safety of the children and the type of activity being conducted.

(10) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(11) There shall be a working telephone at the facility, in each vehicle while transporting children, and during offsite activities.

(12) Bathrooms that provide privacy shall be available for use by the children.

(13) There shall be at least 2 working toilets and 2 working handwashing sinks accessible to the children.

(14) If there are more than 50 children in attendance, there shall be 1 additional working toilet and 1 additional working handwashing sink for each additional group of 1 to 25 children.

(15) Hand sanitizer shall be available to children if there is not a handwashing sink in the room.

(16) There shall be an outdoor area that is safely accessible to children.

(17) The outdoor area shall have at least 40 square feet of space for each child using the area at one time.

(18) The total square footage of the outdoor area shall accommodate at least one-third of the enrolled children at one time or shall be at least 1600 square feet.

(19) The outdoor area shall be enclosed within a fence, wall, or solid natural barrier that is at least 4 feet high.

(20) Whenever there are children in the outdoor area, there shall be shade available to protect them from excessive

sun and heat.

(21) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall meet applicable state and local laws and ordinances related to the operation of a swimming pool and maintain the pool in a safe manner; and

(b) when not in use, the pool shall be enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises, or covered with an approved enclosure that meets the ASTM F1346 standard.

(22) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

(a) ceilings, walls, and floor coverings;

(b) lighting, bathroom, and other fixtures;

(c) draperies, blinds, and other window coverings;

(d) indoor and outdoor play equipment;

(e) furniture, toys, and materials accessible to the children; and

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow, and other hazards.

(23) Accessible raised decks or balconies that are 5 feet or higher, and open basement stairwells that are 5 feet or deeper shall have protective barriers that are at least 3 feet high.

(24) If the facility is subdivided, any part of the building is rented out, or any area of the facility is shared including the outdoor area, the entire facility shall be inspected and covered individuals in the facility shall comply with all rules, except when all of the following conditions are met:

(a) there is a separate entrance for the program;

(b) there are no connecting interior doorways that can be used by unauthorized individuals; and

(c) there is no shared access to the outdoor area used for the program, or a qualified staff member is present when children are using a shared outdoor area of the facility.

R381-70-10. Ratios and Group Size.

(1) The provider shall maintain the staff-to-child ratio of at least one staff member for every 20 children.

(2) The provider shall not exceed the maximum group size of 40 children per group.

(3) There shall be at least 2 staff members present when there are more than 8 children on the premises.

(4) The provider's or an employee's child is not counted in the staff-to-child ratio when the parent of the child is working at the facility, but the child is counted in the group size.

(5) Staff who are 16 or 17 years old may be included in the staff-to-child ratio, but shall not have unsupervised contact with any child being served.

(6) Volunteers may be included in the staff-to-child ratio if they:

(a) are at least 16 years old,

(b) receive at least 2.5 hours of preservice training before counting in the staff-to-child ratio, and

(c) complete at least 1 hour of child related training for each month they volunteer 40 hours or more.

(7) Student interns who are registered in a high school or college child care course may count in the staff-to-child ratio when requirements in R381-70-7(14)(a)-(c) are met.

(8) Guests shall not count in staff-to-child ratios.

R381-70-11. Child Supervision and Security.

(1) The provider shall ensure that staff provide and maintain active supervision of each child at all times.

(2) Active supervision shall include:

(a) staff shall be able to hear the children and be close enough to intervene,

(b) staff shall know the number of children in their assigned group at all times;

(c) staff's attention shall be focused on the children and not on staff's personal interests;

(d) staff shall be aware of the entire group of children even when interacting with a smaller group or an individual child; and

(e) staff shall position themselves so all children in their assigned group are actively supervised.

(3) Whenever a child is participating in program services, the child's parent shall have access to their child and the areas used to serve their child.

(4) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out;

(b) only parents or persons with written authorization from the parent may sign out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, such as a signature, initials, or electronic code;

(e) the sign-in and sign-out records include the date and time each child arrives and leaves; and

(f) there is written permission from their parents if children sign themselves in and out.

(5) In an emergency, program staff shall accept the parent's verbal authorization to release a child when the staff can confirm the identity of:

(a) the person giving verbal authorization, and

(b) the person picking up the child.

(6) A six-week record of each child's daily attendance, including sign-in and sign-out records, shall be kept on-site for review by the Department.

R381-70-12. Child Guidance and Interaction.

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in the program.

(2) The provider shall inform parents, children, and those who interact with the children of the program's behavioral expectations and how any misbehavior will be handled.

(3) Individuals who interact with the children shall guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) Staff shall use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others, or from destroying property.

(5) Interactions with the children shall not include any of the following:

(a) any form of corporal punishment or any action that produces physical pain or discomfort such as hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

(6) Any person who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in Utah Code Section 62A-4a-403 and Section 62A-4a-411.

R381-70-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment

shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Harmful objects and hazards, such as the following, shall be inaccessible to children:

(a) poisonous and harmful plants;

(b) razors and other similar blades;

(c) strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck;

(d) tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways;

(e) objects blocking the exits; and

(f) standing water that measures 2 inches or deeper and 5 by 5 inches or greater in diameter.

(3) Toxic or hazardous chemicals such as insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(4) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(5) Children shall be protected from items that cause electrical shock such as live electrical wires.

(6) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(7) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(8) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in program vehicles any time a child is present.

(9) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(11) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(12) In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:

(a) in the facility or any other building where a child is being served,

(b) in any vehicle that is transporting a child in the program,

(c) within 25 feet of any entrance to the facility or other building occupied by a child being served, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child being served.

R381-70-14. Emergency Preparedness and Response.

(1) The provider shall post the facility's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the facility or in an area clearly visible to anyone needing the information.

(2) The provider shall keep first-aid supplies in the facility, including at least antiseptic, bandages, and tweezers.

(3) The provider shall conduct fire evacuation drills monthly. Drills shall include a complete exit of all children, staff, and volunteers from the building.

(4) The provider shall document each fire drill, including:

(a) the date and time of the drill,

(b) the number of children participating,

(c) the name of the person supervising the drill,

(d) the total time to complete the evacuation, and

(e) any problems encountered.

(5) The provider shall conduct drills for disasters other than fires at least once every 6 months.

(6) The provider shall document each disaster drill, including:

(a) the type of disaster, such as earthquake, flood, prolonged power or water outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(7) The provider shall vary the days and times on which fire and other disaster drills are held.

(8) The provider shall keep documentation of the previous 12 months of fire and disaster drills on-site for review by the Department.

(9) In case of an emergency or disaster, the provider and employees shall follow procedures as outlined in the program's health and safety plan.

(10) The provider shall give parents a written report of every incident, accident, or injury involving their child:

(a) The staff involved, the program director, and the person picking up the child shall sign the report on the day of occurrence; or

(b) If children sign themselves out of the program, a copy of the report shall be sent to the parent on the day following the occurrence.

(11) If a child is injured and the injury appears serious but not life-threatening, the child's parent shall be contacted immediately.

(12) In the case of a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb:

(a) emergency personnel shall be called immediately;

(b) after emergency personnel are called, then the parent shall be contacted; and

(c) if the parent cannot be reached, staff shall try to contact the child's emergency contact person.

(13) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the Department within the next business day of the incident; or

(b) contact the Department within the next business day and submit a completed accident report form within 5 business days of the incident.

(14) The provider shall keep a six-week record of every incident, accident, and injury report on-site for review by the Department.

R381-70-15. Health and Infection Control.

(1) The building, furnishings, equipment, and outdoor area shall be kept clean and sanitary including:

(a) ceilings, walls, and flooring shall be clean and free of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food shall be clean and sanitary;

(c) surfaces used by children shall be free of rotting

food or a build-up of food;

(d) the building and grounds shall be free of a build-up of litter, trash, and garbage; and

(e) the facility shall be free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) Fabric toys and items such as stuffed animals, cloth dolls, pillows, and dress-up clothes shall be machine washable and washed weekly, and as needed.

(4) Water play tables or tubs shall be cleaned and sanitized daily, if used by the children.

(5) Bathroom surfaces including toilets, sinks, faucets, and counters shall be cleaned and sanitized each day.

(6) Toilet paper shall be accessible to children and kept in a dispenser.

(7) The provider shall post handwashing procedures that are readily visible from each handwashing sink and shall ensure that the procedures are followed.

(8) Staff and volunteers shall wash their hands thoroughly with liquid soap and running water at required times including:

(a) before handling or preparing food,

(b) before and after eating meals and snacks,

(c) after using the toilet or helping a child use the toilet,

(d) after contact with a body fluid,

(e) when coming in from outdoors, and

(f) after cleaning up or taking out garbage.

(9) Staff shall teach children how to wash their hands thoroughly and shall oversee handwashing whenever possible.

(10) The provider shall ensure that children wash their hands thoroughly with liquid soap and running water at required times including:

(a) before and after eating meals and snacks,

(b) after using the toilet,

(c) after contact with a body fluid,

(d) before using a water play table or tub, and

(e) when coming in from outdoors.

(11) Only single-use towels from a covered dispenser or an electric hand dryer may be used to dry hands.

(12) Personal hygiene items, such as toothbrushes, combs, and hair accessories, shall not be shared and shall be stored so they do not touch each other, or they shall be sanitized between each use.

(13) A child's clothing shall be promptly changed if the child has a toileting accident.

(14) Children's clothing that is wet or soiled from a body fluid shall:

(a) not be rinsed or washed at the facility,

(b) be placed in a leakproof container that is labeled with the child's name, and

(c) be returned to the parent.

(15) Staff shall use a portable body fluid cleanup kit for cleaning up body fluid spills. The kit shall be:

(a) in a place easily accessed by staff, and

(b) restocked as needed.

(16) Staff shall take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, or vomit. Except for toileting accidents, staff shall:

(a) wear waterproof gloves;

(b) clean the surface using a detergent solution;

(c) rinse the surface with clean water;

(d) sanitize the surface;

(e) throw away in a leakproof plastic bag the disposable materials, such as paper towels, that were used to clean up the body fluid;

(f) wash and sanitize any nondisposable materials used to clean up the body fluid, such as cleaning cloths, mops, or reusable rubber gloves, before reusing them; and

(g) wash their hands after cleaning up the body fluid.

(17) A child who is ill with an infectious disease may not be present at the facility except when the child shows signs of illness after arriving at the program.

(18) When a child becomes ill while at the program:

(a) the provider shall contact the child's parent or, if the parent cannot be reached, an individual listed as the emergency contact to immediately pick up the child; and

(b) if the child is ill with an infectious disease, the child shall be made comfortable in a safe, supervised area that is separated from the other children until the parent arrives.

(19) When any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the illness is discovered.

(20) The provider shall post a notice at the facility when any staff member or child has an infectious disease or parasite. The notice shall:

(a) not disclose any personal identifiable information,

(b) be posted in a conspicuous place where it can be seen by all parents,

(c) be posted and dated on the same day that the disease or parasite is discovered, and

(d) remain posted for at least 5 days.

R381-70-16. Food and Nutrition.

(1) On days when services are provided for 3 or more hours, the provider shall ensure that each child is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP menus, the standard Department-approved menus, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) programs that are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name,

(b) refrigerated if needed, and

(c) consumed only by that child.

R381-70-17. Medications.

(1) Nonrefrigerated medications shall be stored at least 48 inches above the floor or shall be locked.

(2) Refrigerated medications shall be stored at least 36 inches above the floor or shall be locked, and if liquid, they shall be stored in a separate leakproof container.

(3) All over-the-counter and prescription medications

supplied by parents shall:
(a) be labeled with the child's full name,
(b) be kept in the original or pharmacy container,
(c) have the original label, and
(d) have child-safety caps.
(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.
(5) The medication permission form shall include:
(a) the name of the child,
(b) the name of the medication,
(c) written instructions for administration, and
(d) the parent signature and the date signed.
(6) The instructions for administering the medication shall include:
(a) the dosage,
(b) how the medication will be given,
(c) the times and dates to administer the medication, and
(d) the disease or condition being treated.
(7) If the provider supplies an over-the-counter medication for children's use, the medication shall not be administered to any child without previous parental consent for each instance it is given. The consent shall be:
(a) prior written consent; or
(b) verbal consent if the date and time of the consent is documented, and is signed by the parent upon picking up their child.
(8) The staff member administering the medication shall:
(a) wash their hands,
(b) check the medication label to confirm the child's name if the parent supplied the medication,
(c) check the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer, and
(d) administer the medication.
(9) Immediately after administering a medication, the staff member giving the medication shall record the following information:
(a) the date, time, and dosage of the medication given;
(b) any errors in administration or adverse reactions; and
(c) their signature or initials.
(10) The provider shall report a child's adverse reaction to a medication or error in administration to the parent immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.
(11) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication before the time the medication needs to be given.
(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the Department.

R381-70-18. Activities.
(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.
(2) Daily activities shall include outdoor play as weather and air quality allow.
(3) Physical development activities shall include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every 2 hours children spend in the program.
(4) The provider shall post a daily activity schedule that includes:
(a) activities that support children's healthy development; and
(b) the times activities occur including at least meal, snack, and outdoor play times.
(5) Toys, materials, and equipment needed to support children's healthy development shall be available to the children.
(6) Except for occasional special events, children's screen time on media such as television, cell phones, tablets, and computers shall be part of a media plan that addresses the needs of children.
(7) If swimming activities are offered:
(a) the provider shall obtain parental permission before each child uses the pool;
(b) staff shall stay at the pool supervising whenever a child is in the pool or has access to the pool;
(c) if the pool is over 4 feet deep, there shall be a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and
(d) lifeguards and pool personnel shall not count toward the staff-to-child ratio.
(8) If offsite activities are offered:
(a) the provider shall obtain written parental consent before each activity;
(b) the required staff-to-child ratio and supervision shall be maintained during the entire activity;
(c) a first aid kit shall be available;
(d) children shall wear or carry with them the name and phone number of the program;
(e) children's names shall not be used on nametags, t-shirts, or in other visible ways; and
(f) there shall be a way for staff and children to wash their hands with soap and water, or if there is no source of running water, staff and children shall clean their hands with wet wipes and hand sanitizer.
(9) On every offsite activity, staff shall take the written emergency information and releases for each child in the group. The information shall include:
(a) the child's name,
(b) the parent's name and phone number,
(c) the name and phone number of a person to notify in case of an emergency if the parent cannot be contacted,
(d) the names of people authorized by the parents to pick up the child, and
(e) current emergency medical treatment and emergency medical transportation releases.

R381-70-19. Play Equipment.
(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.
(2) With the exception of swings, stationary play equipment with any designated play surface higher than 30 inches shall have at least a 6-foot use zone measured from the outermost edge of the equipment.
(3) The use zone in the front and rear of a single-axis swing shall extend at least twice the distance of the swing pivot point to the ground.
(4) The use zone for the sides of a single-axis swing shall extend at least 6 feet from the outermost edge of the swing.
(5) The use zone for a multi-axis swing, such as a tire swing, shall extend at least the measurement of the suspending rope or chain plus 6 feet.
(6) The use zone for a merry-go-round shall extend at least 6 feet in all directions from its outermost edge.
(7) The use zone for a spring rocker shall extend at least 6 feet from the outermost edge of the rocker when at rest if

the seat is higher than 20 inches.

(8) The following use zones shall not overlap the use zone of any other piece of play equipment:

(a) the use zone in front of a slide,

(b) the use zone in the front and rear of any single-axis swing,

(c) the use zone of a multi-axis swing, and

(d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.

(10) Unless prohibited in R381-70-19(8), the use zones of play equipment may overlap when:

(a) there is at least 6 feet between the pieces of equipment if the designated play surface is 30 inches or lower, or (b) there is at least 9 feet between the pieces of equipment if the designated play surface is higher than 30 inches.

(11) Stationary play equipment without moving parts children sit or stand on shall not be placed on concrete, asphalt, dirt, a bare floor, or any other hard surface, but may be placed on grass or other cushioning, if the highest designated play surface measures between 6 to 30 inches.

(12) Protective cushioning shall cover the entire surface of each required use zone and its depth or thickness shall be determined by the highest designated play surface of the equipment.

(13) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1.

(a) the provider shall ensure that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 1 if compacted; and

(b) if the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 7'	9"	not allowed	9"	not allowed	6"
Over 7' up to 8'	9"	not allowed	9"	not allowed	6"
Over 8' up to 9'	9"	not allowed	9"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	9"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(14) If shredded wood products are used as protective cushioning:

(a) the provider shall keep on-site for review by the Department documentation from the manufacturer that the wood product meets ASTM Specification F1292,

(b) there shall be adequate drainage under the material, and

(c) the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	9"	9"	9"
Over 8' up to 9'	9"	9"	9"
Over 9' up to 10'	9"	9"	9"
Over 10' up to 11'	9"	9"	9"
Over 11'	9"	not allowed	not allowed

(15) If a unitary cushioning is used, the provider shall ensure that the material meets the standard established in ASTM Specification F1292. The provider shall maintain on-site for review by the Department documentation from the manufacturer that the material meets these specifications.

(16) If a unitary cushioning is used, the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(17) A play equipment platform that is more than 48 inches above the floor or ground shall have a protective barrier that is at least 38 inches high.

(18) There shall be no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(19) Stationary play equipment shall be stable and securely anchored.

(20) There shall be no trampolines on the premises that are accessible to any child in the program.

(21) There shall be no heavy metal swings, such as animal-shaped swings, accessible to children.

(22) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(23) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(24) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(25) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

R381-70-20. Transportation.

If transportation services are offered:

(1) For each child being transported, the provider shall have a transportation permission form:

(a) signed by the parent, and

(b) on-site for review by the Department.

(2) Each vehicle used for transporting children shall:

(a) be enclosed with a roof or top,

(b) be equipped with safety restraints,

(c) have a current vehicle registration,

(d) be maintained in a safe and clean condition,

(e) contain a first aid kit, and

(f) contain a body fluid clean up kit.

(3) The safety restraints in each vehicle that transports children shall:

(a) be appropriate for the age and size of each child who is transported, as required by Utah law;

(b) be properly installed; and

(c) be in safe condition and working order.

(4) The driver of each vehicle who is transporting children shall:

(a) be at least 18 years old;
(b) have and carry with them a current, valid driver's license for the type of vehicle being driven;
(c) have with them the written emergency contact information for each child being transported;
(d) ensure that each child being transported is in an individual safety restraint that is used according to Utah law;
(e) ensure that the inside vehicle temperature is between 60-85 degrees Fahrenheit;
(f) never leave a child in the vehicle unattended by an adult;
(g) ensure that children stay seated while the vehicle is moving;
(h) never leave the keys in the ignition when not in the driver's seat; and
(i) ensure that the vehicle is locked during transport.
(5) When the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:
(a) each child being transported has a completed transportation permission form signed by their parent,
(b) a staff member goes with the children and actively supervises them,
(c) the staff-to-child ratio is maintained, and
(d) staff take each child's written emergency contact information and releases with them.

R381-70-21. Animals.
(1) The provider shall inform parents of the kinds of animals allowed at the facility.
(2) There shall be no animal on the premises that:
(a) is naturally aggressive;
(b) has a history of dangerous, attacking, or aggressive behavior; or
(c) has a history of biting even one person.
(3) Animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.
(4) There shall be no animal or animal equipment in food preparation or eating areas.
(5) If children help in the cleaning of animals or animal equipment, the children shall wash their hands immediately after cleaning the animal or equipment.
(6) Children and staff shall wash their hands immediately after playing with or touching animals, including reptiles and amphibians.
(7) Dogs, cats, and ferrets that are housed at the facility shall have current rabies vaccinations.
(8) The provider shall keep current animal vaccination records on-site for review by the Department.

KEY: child care facilities, child care, child care centers, out of school time child care programs
December 28, 2017 26-39-203(1)(a)

R381. Health, Child Care Center Licensing Committee.
R381-100. Child Care Centers.
R381-100-1. Legal Authority and Purpose.

(1) This rule is enacted and enforced in accordance with Utah Code, Title 26, Chapter 39.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in child care centers and defines the general procedures and requirements to obtain and maintain a license to provide child care.

R381-100-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background screening that may result in a denial from Child Care Licensing.

(4) "Background Screening Denial" means that an individual has failed the background screening and is prohibited from being involved with a child care program.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(8) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(9) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(10) "Child Care" means continuous care and supervision of 5 or more qualifying children that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(11) "Child Care Center Licensing Committee" means the Child Care Center Licensing Committee created in the Utah Child Care Licensing Act.

(12) "Child Care Program" means a person or business that offers child care.

(13) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(14) "Conditional Status" means that the provider is at risk of losing their license because compliance with licensing rules has not been maintained.

(15) "Covered Individual" means any of the following individuals involved with a child care program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(e) a caregiver;

(f) a volunteer, except a parent of a child enrolled in the child care program;

(g) an individual age 12 years or older who resides in the facility; and

(h) anyone who has unsupervised contact with a child in care.

(16) "CPSC" means the Consumer Product Safety Commission.

(17) "Department" means the Utah Department of Health.

(18) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(19) "Director" means a person who meets the director qualifications in this rule, and who assumes the day-to-day responsibilities for compliance with Child Care Licensing rules.

(20) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(21) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(22) "Facility" means a child care program or the premises approved by the Department to be used for child care.

(23) "Group" means the children who are supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.

(24) "Group Size" means the number of children in a group.

(25) "Guest" means an individual who is not a covered individual and is at the child care facility with the provider's permission.

(26) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(27) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(28) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(29) "Infant" means a child who is younger than 12 months of age.

(30) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(31) "Involved with Child Care" means to do any of the following at or for a child care program licensed by the Department:

(a) provide child care;

(b) volunteer at a child care program;

(c) own, operate, direct, or be employed at a child care program;

(d) reside at a facility where child care is provided; or

(e) be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.

(32) "License" means a license issued by the Department to provide child care services.

(33) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(34) "LIS Supported Finding" means background screening information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(35) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(36) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

(37) "Parent" means the parent or legal guardian of a child in care.

(38) "Person" means an individual or a business entity.

(39) "Physical Abuse" means causing nonaccidental physical harm to a child.

(40) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

(41) "Preschooler" means a child age 2 through 4 years old.

(42) "Protective Barrier" means a structure such as bars, lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

(43) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

(44) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(45) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(46) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(47) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(48) "School-Age Child" means a child age 5 through 12 years old.

(49) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(50) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(51) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(52) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(53) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as a protruding S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(54) "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

(55) "Toddler" means a child aged 12 through 23 months.

(56) "Unrelated Child" means a child who is not a "related child" as defined in R381-100-2(46).

(57) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background screening.

(58) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(59) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(60) "Working Days" means the days of the week the Department is open for business.

R381-100-3. License Required.

(1) A person or persons shall be licensed as a child care center if they provide care:

(a) in the absence of the child's parent,

(b) in a place other than the provider's home or the child's home,

(c) for 5 or more children,

(d) for 4 or more hours per day,

(e) for each individual child for less than 24 hours per day,

(f) on an ongoing basis for 4 or more weeks in a year, and

(g) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who cares for related children only, or

(b) a person who provides care on a sporadic basis only.

(3) According to Foster Care Services rule R501-12-4(8)(f), a provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

R381-100-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of the educational credentials of the person who will be the director as required in R381-100-7(4);

(f) a copy of a completed Department health and safety plan form;

(g) CCL background screenings for all covered individuals as required in R381-100-8;

(h) a current copy of the Department's new provider training certificate of attendance; and

(i) all required fees, which are nonrefundable.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;

(c) exit doors shall operate properly and shall be well maintained;

(d) obstructions in exits, aisles, corridors, and stairways shall be removed;

(e) items stored under exit stairs shall be removed;

(f) exit doors shall be unlocked from the inside during business hours;

(g) exits shall be clearly identified;

(h) there shall be unobstructed fire extinguishers that are of an X minimum rate and appropriate to the type of hazard, currently charged and serviced, and mounted not more than 5 feet above the floor;

(i) there shall be working smoke detectors that are properly installed on each level of the building; and

(j) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the provider serves food and the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) cooks shall use hair restraints and wear clean outer clothing;

(f) according to Food Code 2-103-11, only necessary staff shall be present in the kitchen;

(g) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(h) chemicals shall be stored away from food and food service items;

(i) food shall be properly stored, kept to the proper temperature, and in good condition; and

(j) there shall be a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

(a) a change of the child care facility's location, or

(b) a change that transfers 50 percent or more ownership or controlling interest to a new individual or entity.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

(b) a change in the name of the program;

(c) a change in the regulation category of the program;

(d) a change in the name of the provider;

(e) an addition or loss of a director; or

(f) a change in ownership that does not require a new license.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R381-100-5. Rule Violations and Penalties.

(1) The Department may place a program's child care license on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The Department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The Department may increase monitoring of the program that is on conditional status to verify compliance with rules.

(4) The Department may deny or revoke a license if the child care provider:

(a) fails to meet the conditions of a license on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) misrepresents information by intentionally altering a license or any other document issued by the Department;

(e) refuses to allow authorized representatives of the Department access to the facility to ensure compliance with rules;

(f) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude a person from having a license.

(5) Within 10 working days of receipt of a revocation notice, the provider shall submit to the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the revocation.

(6) The Department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect their health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child in care, the Department may order the child care provider to suspend services and/or prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

(9) If a person is providing care for more than 4 unrelated children without the appropriate license, the Department may:

(a) issue a cease and desist order, or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a license,

(ii) conditions do not create a clear and present danger to the children in care, and

(iii) the person agrees to apply for the appropriate license within 30 calendar days of notification by the Department.

(10) If a person providing care without the appropriate license agrees to apply for a license but does not submit an application and all required application documents within 30 days, the Department may issue a cease and desist order.

(11) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code, Section 26-39-601.

(12) Assessment of any civil money penalty does not prevent the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license.

(13) Assessment of any administrative civil money penalty under this section does not prevent court-ordered or other equitable remedies.

(14) The Department may deny an application or revoke a license for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional inspections, conditional monitoring inspections, background screenings, civil money penalties, and other fees assessed by the Department.

(15) An applicant or provider may appeal any Department decision within 30 days of being informed of the decision.

R381-100-6. Administration and Children's Records.

(1) The provider shall:

(a) be at least 21 years of age,

(b) pass a CCL background screening, and

(c) complete the new provider training offered by the Department.

(2) If the owner is not a sole proprietor, the business entity shall submit to the Department the name(s) and contact information of the individual(s) who shall legally represent them and who shall comply with the requirements stated in R381-100-6(1).

(3) The provider shall not engage in or allow conduct that endangers children in care; or is contrary to the health, morals, welfare, and safety of the public.

(4) The provider shall have knowledge of and comply with all federal, state, and local laws, ordinances, and rules, and shall be responsible for the operation and management of a child care program.

(5) The provider shall comply with licensing rules at all times when a child in care is present.

(6) The provider shall post the original child care license on the facility premises in a place readily visible and accessible to the public.

(7) The provider shall post a copy of the Department's Parent Guide at the facility for parent review during business hours.

(8) The provider shall inform parents and the Department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(9) The provider shall establish, follow, and ensure that all staff and volunteers follow a written health and safety plan that is:

(a) completed on the Department's required form,

(b) submitted to the Department for initial approval and any time changes are made to the plan,

(c) reviewed and updated as needed,

(d) signed and dated at least annually, and

(e) available for review by parents, staff, and the Department during business hours.

(10) The provider shall ensure that each parent completes an admission and health assessment form for their child before the child is admitted into the child care program.

(11) The admission and health assessment form shall include the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of people authorized by the parent to pick up the child;

(e) name, address, and phone number of a person to be

contacted in case of an emergency if the provider is unable to contact the parent;

(f) if available, the name, address, and phone number of an out-of-area emergency contact person for the child;

(g) current emergency medical treatment and emergency transportation releases with the parent's signature;

(h) any known allergies of the child;

(i) any known food sensitivities of the child;

(j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health care of the child;

(l) current ongoing medications that the child may be taking; and

(m) any other special health instructions for the caregiver.

(12) The admission and health assessment form shall:

(a) be reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the Department.

(13) Before admitting any child younger than 5 years of age into the child care program, including the provider's and employees' own children, the provider shall obtain the following documentation from the child's parent:

(a) current immunizations, as required by Utah law;

(b) a medical schedule to receive required immunizations;

(c) a legal exemption; or

(d) a 90-day exemption for children who are homeless.

(14) For each child younger than 5 years of age, including the provider's and employees' own children, the provider shall keep their current immunization records on-site for review by the Department.

(15) The provider shall submit the annual immunization report to the Immunization Program in the Utah Department of Health by the date specified by the Department.

(16) Each child's information shall be kept confidential and shall not be released without written parental permission.

R381-100-7. Personnel and Training Requirements.

(1) The provider shall train and supervise employees and volunteers to ensure that they are qualified to:

(a) meet the needs of the children as required by rule, and

(b) be in compliance with all licensing rules.

(2) The provider shall ensure that the center has a qualified director as required by licensing rules.

(3) The director shall:

(a) be at least 21 years of age;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) complete the new director training offered by the Department within 60 working days of assuming director duties;

(e) have knowledge of and follow all applicable laws and rules; and

(f) complete at least 20 hours of child care training each year, based on the facility's license date.

(4) New directors shall have one of the following educational credentials:

(a) any bachelor's or higher education degree, and at least 60 clock hours of approved Utah Early Childhood Career Ladder courses in child development, social/emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the Department;

(b) at least 12 college credit hours of child development courses;

(c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other equivalent credential as approved by the Department;

(d) at least a Level 9 from the Utah Early Childhood Career Ladder system; or

(e) a National Administrator Credential (NAC) and at least 60 clock hours of approved Utah Early Childhood Career Ladder courses in child development, social/emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the Department.

(5) The director shall be on duty at the facility for at least 20 hours per week during operating hours and have sufficient freedom from other responsibilities to manage the center and respond to emergencies.

(6) The director shall arrange for a designee who shall have authority to act on behalf of the director in the director's absence.

(7) The director designee shall:

(a) be at least 21 years of age;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 20 hours of child care training each year, based on the facility's license date.

(8) The director or the director designee shall be present at the facility whenever the center is open for care.

(9) Caregivers shall:

(a) be at least 16 years old;

(b)pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before caring for children;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 20 hours of child care training each year, based on the facility's license date.

(10) Substitutes shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) be capable of providing care, supervising children, and handling emergencies in the caregiver's absence;

(d) receive at least 2.5 hours of preservice training before caring for children; and

(e) complete at least 1.5 hours of child care training for each month they work 40 hours or more.

(11) All other employees such as drivers, cooks, and clerks shall:

(a) pass a CCL background screening,

(b) receive at least 2.5 hours of preservice training before beginning job duties, and

(c) have knowledge of and follow all applicable laws and rules.

(12) Volunteers shall:

(a) pass a CCL background screening, and

(b) not have unsupervised contact with any child in care if the volunteer is younger than 18 years of age.

(13) Guests:

(a) shall not have unsupervised contact with any child in care,

(b) shall wear a guest nametag, and

(c) are not required to pass a CCL background screening.

(14) Student interns who are registered and participating in a high school or college child care course:

(a) are not required to pass a CCL background screening,

(b) shall not have unsupervised contact with any child in care, and

(c) shall wear a guest nametag.

(15) Parents of children in care:

(a) shall not have unsupervised contact with any child in care except their own, and

(b) do not need a CCL background screening unless involved with child care in the center.

(16) Household members who are:

(a) 12 to 17 years old shall pass a CCL background screening;

(b) 18 years of age or older shall pass a CCL background screening that includes fingerprints; and

(c) younger than 18 years of age shall not have unsupervised contact with any child in care including during offsite activities and transportation.

(17) Individuals who provide IEP or IFSP services such as physical, occupational, or speech therapists:

(a) are not required to have a CCL background screening as long as the child's parent has given permission for services to take place at the center, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(18) Members from law enforcement or from Child Protective Services:

(a) are not required to have a CCL background screening, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(19) Preservice training shall include the following:

(a) job description and duties;

(b) current Department rule sections R381-100-7 through 24;

(c) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(d) prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(e) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(f) prevention of sudden infant death syndrome (SIDS) and the use of safe sleeping practices;

(g) recognizing the signs of homelessness and available assistance;

(h) a review of the information in each child's health assessment in the caregiver's assigned group; and

(i) an introduction and orientation to the children in care.

(20) Documentation of each individual's preservice training shall be kept on-site for review by the Department and include the following:

(a) training topics,

(b) date of the training, and

(c) total hours or minutes of training.

(21) Annual child care training shall include the following topics:

(a) current Department rule sections R381-100-7 through 24;

(b) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(c) the prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(d) principles of child growth and development, including brain development;

(e) positive guidance and interactions with children;

(f) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(g) prevention of sudden infant death syndrome (SIDS) and use of safe sleeping practices; and

(h) recognizing the signs of homelessness and available assistance.

(22) At least 10 of the 20 hours of annual child care training shall be face-to-face instruction.

(23) Individuals who are required to receive annual child care training and who begin employment partway through the facility's license year shall complete a proportionate number of training hours including the face-to-face instruction.

(24) Documentation of each individual's annual child care training shall be kept on-site for review by the Department and include the following:

(a) training topic,

(b) date of the training,

(c) whether the training was face-to-face or non-face-to-face instruction,

(d) name of the person or organization that presented the training, and

(e) total hours or minutes of training.

(25) Whenever there are children at the center, there shall be at least one caregiver present who can demonstrate English literacy skills needed to care for children and respond to emergencies.

(26) At least one staff member with a current Red Cross, American Heart Association, or equivalent first aid and infant/child CPR certification shall be present when children are in care:

(a) at the facility,

(b) in each vehicle transporting children, and

(c) at each offsite activity.

(27) CPR certification shall include hands-on testing.

(28) The following records for each covered individual shall be kept on-site for review by the Department:

(a) the date of initial employment or association with the program;

(b) a copy of the current background screening card issued by the Department;

(c) a current first aid and CPR certification, if required in rule; and

(d) a six-week record of the times worked each day.

R381-100-8. Background Screenings.

(1) The provider shall ensure that an online CCL background screening form is submitted within 10 working days from when:

(a) a new covered individual becomes involved with the program,

(b) a new covered individual age 12 years or older begins living in the facility, and

(c) a child who resides in the facility turns 12 years old.

(2) Unless an exception is granted in rule, the provider shall ensure that a CCL background screening for each individual age 18 years or older includes fingerprints and fingerprints fees.

(3) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(4) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(5) Fingerprints are not required if:

(a) the covered individual has resided in Utah continuously for the past 5 years, or since the individual's 18th birthday and will only be involved with child care in a program that was licensed or certified prior to 1 July 2013; or

(b) the covered individual has previously submitted fingerprints to the Department under this section for a national criminal history record check and has resided in Utah

continuously since that time.

(6) Background screenings are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background screening card.

(7) At least 2 weeks before the end of the month that is written on a covered individual's background screening card, the provider shall:

(a) have the individual submit an online CCL background screening form,

(b) authorize the individual's background screening form, and

(c) pay all required fees.

(8) Regardless of any exception in rule, if an in-state criminal background screening indicates that a covered individual age 18 years or older has a background finding, the Department may require that individual to submit fingerprints and fees in order for the Department to conduct a national criminal background screening for that individual.

(9) The following background findings may deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions,

(d) any Misdemeanor A convictions, or

(e) Misdemeanor B and C convictions for the reasons listed in R381-100-8(10).

(10) The following convictions, regardless of severity, may result in a background screening denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

(11) A covered individual with a Class A misdemeanor background finding not listed in R381-100-8(10) may be involved with child care when:

(a) 10 or more years have passed since the Class A misdemeanor offense, and

(b) there is no other conviction for the individual in the past 10 years.

(12) A covered individual with a Class A misdemeanor background finding not listed in R381-100-8(10) may be involved with child care for up to 6 months if:

(a) 5 to 9 years have passed since the offense,

(b) there is no other conviction since the Class A misdemeanor offense,

(c) the individual provides to the Department documentation of an active petition for expungement, and

(d) the provider ensures that the individual does not have unsupervised contact with any child in care.

(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.

(14) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background screening was conducted.

(15) The Department may rely on the criminal background screening findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

(16) If the provider has a background screening denial, the Department may suspend or deny their license until the reason for the denial is resolved.

(17) If a covered individual has a background screening denial, the Department may prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

(18) If a covered individual is denied a license or employment based upon the criminal background screening and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(19) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(20) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

(21) The Executive Director of the Department of Health may overturn a background screening denial under the following conditions:

(a) the background finding is not a felony, and

(b) the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R381-100-9. Facility.

(1) There shall be at least 35 square feet of indoor space for each child in care, including the provider's and employees' children.

(2) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children,

(b) for the care of children, or

(c) to store classroom materials.

(3) The following areas are not included when measuring indoor space for children's use:

(a) bathrooms,

(b) closets and staff lockers,

(c) hallways,

(d) lobbies and entryways,

(e) kitchens, and

(f) staff offices.

(4) The maximum allowed capacity for a child care facility may be limited by local ordinances.

(5) The number of children in care at any given time shall not exceed the capacity identified on the license.

(6) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their

local health department within 5 working days and follow required procedures for remediation of the lead hazard.

(7) Each room and indoor area that is used by children shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(8) Windows and glass doors within 36 inches from the floor or ground shall be made of safety or tempered glass, or have a protective guard.

(9) All rooms and areas shall have adequate light intensity for the safety of the children and the type of activity being conducted.

(10) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(11) There shall be a working telephone at the facility, in each vehicle while transporting children, and during offsite activities.

(12) There shall be a working handwashing sink in each classroom or next to each classroom in buildings constructed after 1 July 1997.

(13) Each area where infants or toddlers are cared for shall meet one of the following criteria:

(a) There shall be 2 working sinks in the room. One sink shall be used exclusively for the preparation of food and bottles and handwashing before food preparation, and the other sink shall be used only for handwashing after diapering and nonfood activities.

(b) There shall be 1 working sink that is used only for handwashing in the room, and all bottle and food preparation shall be done in the kitchen and brought to the infant and toddler area by a non-diapering staff member.

(14) For preschoolers and toddlers who are toilet trained, there shall be 1 working toilet and 1 working sink for every fifteen children in the center. For school-age children, there shall be 1 working toilet and 1 working sink for every 25 children in the center.

(15) A bathroom that provides privacy shall be available for use by school-age children.

(16) There shall be an outdoor area that is safely accessible to children.

(17) The outdoor area shall have at least 40 square feet of space for each child using the area at one time.

(18) The total square footage of the outdoor area shall accommodate at least one-third of the enrolled children at one time or shall be at least 1600 square feet.

(19) The outdoor area shall be enclosed within a fence, wall, or solid natural barrier that is at least 4 feet high.

(20) When children are outdoors, they shall be in the enclosed area except during offsite activities.

(21) There shall be no gap 5 by 5 inches or greater in or under the fence or barrier.

(22) Whenever there are children in the outdoor area, there shall be shade available to protect them from excessive sun and heat.

(23) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall meet applicable state and local laws and ordinances related to the operation of a swimming pool and maintain the pool in a safe manner; and

(b) when not in use, the pool shall be enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises, or covered with an approved enclosure that meets the ASTM F1346 standard.

(24) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

(a) ceilings, walls, and floor coverings;

(b) lighting, bathroom, and other fixtures;

(c) draperies, blinds, and other window coverings;

(d) indoor and outdoor play equipment;

(e) furniture, toys, and materials accessible to the children; and

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow, and other hazards.

(25) Accessible raised decks or balconies that are 5 feet or higher, and open basement stairwells that are 5 feet or deeper shall have protective barriers that are at least 3 feet high.

(26) If the facility is subdivided, any part of the building is rented out, or any area of the facility is shared including the outdoor area, the entire facility shall be inspected and covered individuals in the facility shall comply with all rules, except when all of the following conditions are met:

(a) there is a separate entrance for the child care program;

(b) there are no connecting interior doorways that can be used by unauthorized individuals; and

(c) there is no shared access to the outdoor area used for child care, or a qualified caregiver is present when children are using a shared outdoor area of the facility.

R381-100-10. Ratios and Group Size.

(1) As listed in Table 1 for single-age groups of children, the provider shall:

(a) maintain at least the number of caregivers and not exceed the number of children in the caregiver-to-child ratio, and

(b) not exceed the group sizes.

TABLE 1

Caregiver-to-Child Ratios and Group Sizes

Ages of Children	# of Caregivers	# of Children	Group Size
birth - 23 months	1	4	8
2 years old	1	7	14
3 years old	1	12	24
4 years old	1	15	30
School-age	1	20	40

(2) As listed in Tables 2-13 for mixed-age groups of children, the provider shall:

(a) maintain at least the number of caregivers and not exceed the number of children in the caregiver-to-child ratio, and

(b) not exceed the group sizes.

TABLE 2

Older Toddlers and Two-year-olds

# Caregivers Required	Age	# Children Present
1	18 to 23 months	1-3
	2	1-6
	Total children: up to 7	
2	18 to 23 months	1-6
	2	1-13
	Total children: up to 14	

TABLE 3

Two-year-olds and Three-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-9
	Total children: up to 10	
2	2	1-13
	3	1-19
	Total children: up to 20	

TABLE 4

Two-year-olds and Four-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	4	1-10
	Total children: up to 11	
2	2	1-13
	4	1-21
	Total children: up to 22	

TABLE 5

Two-year-olds and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	5-12	1-13
	Total children: up to 14	
2	2	1-13
	5-12	1-27
	Total children: up to 28	

TABLE 6

Three-year-olds and Four-year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	4	1-13
	Total children: up to 14	
2	3	1-23
	4	1-27
	Total children: up to 28	

TABLE 7

Three-year-olds and Five-to-twelve-year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	5-12	1-15
	Total children: up to 16	
2	3	1-23
	5-12	1-31
	Total children: up to 32	

TABLE 8

Four-year-olds and Five-to-twelve-year-olds

# Caregivers Required	Age	# Children Present
1	4	1-14
	5-12	1-17
	Total children: up to 18	
2	4	1-29
	5-12	1-35
	Total children: up to 36	

TABLE 9

Two-year-olds, Three-year-olds, and Four-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-9
	4	1-9
	Total children: up to 11	
2	2	1-13
	3	1-20
	4	1-20
	Total children: up to 22	

TABLE 10

Two-year-olds, Three-year-olds, and Five-to-twelve-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-11
	5-12	1-11
	Total children: up to 13	
2	2	1-13
	3	1-24
	5-12	1-24
	Total children: up to 26	

TABLE 11

Two-year-olds, Four-year-olds, and Five-to-twelve-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	4	1-12
	5-12	1-12
	Total: up to 14	
2	2	1-13
	4	1-26
	5-12	1-26
	Total children: up to 28	

TABLE 12

Three-year-olds, Four-year-olds, and Five-to-twelve-year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	4	1-14
	5-12	1-14
	Total: up to 13	
2	3	1-23
	4	1-30
	5-12	1-30
	Total children: up to 32	

TABLE 13

Two-year-olds, Three-year-olds, Four-year-olds, and Five-to-twelve-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-11
	4	1-11
	5-12	1-11
	Total children: up to 14	
2	2	1-13
	3	1-25
	4	1-25
	5-12	1-25
	Total children: up to 28	

(3) Infants and toddlers may be included in mixed-age groups only when 8 or fewer children are present in the group.

(4) If more than 2 children who are younger than 24 months old are included in a mixed-age group, and the group has more than 4 children, there shall be at least 2 caregivers with the group.

(5) During nap time only, the caregiver-to-child ratio may double if:

(a) all children in the group are at least 18 months old,

(b) all children in the group are in a restful and nonactive state, and

(c) the caregiver supervising the napping children is able to contact another on-site caregiver without leaving the children unattended.

(6) There shall be at least 2 caregivers present when there is only one group of children on the premises and that group has more than 8 children, or more than 2 infants or toddlers.

(7) The provider's or an employee's child age 4 years or older is not counted in the caregiver-to-child ratio when the parent of the child is working at the facility, but the child shall be counted in the group size.

(8) Caregivers who are 16 or 17 years old may be included in the caregiver-to-child ratio, but shall not have unsupervised contact with any child in care.

(9) Volunteers may be included in the caregiver-to-child ratio if they:

(a) are at least 16 years old,

(b) receive at least 2.5 hours of preservice training before counting in the caregiver-to-child ratio, and

(c) complete at least 1.5 hours of child care training for each month they volunteer 40 hours or more.

(10) Student interns who are registered in a high school or college child care course may count in the caregiver-to-child ratio when requirements in R381-100-7(14)(a)-(c) are met.

(11) Guests shall not count in caregiver-to-child ratios.

(12) A center that has been constructed, licensed, and continuously operated since 1 January 2004 is

exempt from maximum group size requirements if:

(a) the caregiver-to-child ratio is maintained, and

(b) the required square footage for each group of children is maintained.

R381-100-11. Child Supervision and Security.

(1) The provider shall ensure that caregivers provide and maintain active supervision of each child at all times.

(2) Active supervision shall include:

(a) for children younger than 5 years of age, the caregiver shall be physically present in the room or area with the children;

(b) for school-age children, the caregiver shall be able to hear the children and be close enough to intervene;

(c) caregivers shall know the number of children in their care at all times;

(d) caregivers' attention shall be focused on the children and not on caregivers' personal interests;

(e) caregivers shall be aware of the entire group of children even when interacting with a smaller group or an individual child; and

(f) caregivers shall position themselves so all children in their assigned group are actively supervised.

(3) When video cameras and mirrors are used to supervise napping children:

(a) the napping room shall be adjacent to a non-napping room;

(b) there shall be a staff member in the non-napping room;

(c) cameras or mirrors shall be positioned so that every child can be seen;

(d) the staff member shall be able to see and hear each child;

(e) there shall be an open door without a barrier, such as a gate, between the napping room and the non-napping room; and

(f) children who wake up shall be moved to the non-napping room.

(4) A blanket or other item shall not be placed over sleeping equipment in such a way that prevents the caregiver from seeing the sleeping child.

(5) Whenever a child is in care, the child's parent shall have access to their child and the areas used to care for their child.

(6) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out;

(b) only parents or persons with written authorization from the parent may sign out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, such as a signature, initials, or electronic code;

(e) the sign-in and sign-out records include the date and time each child arrives and leaves; and

(f) there is written permission from their parents if school-age children sign themselves in and out.

(7) In an emergency, the caregiver shall accept the parent's verbal authorization to release a child when the caregiver can confirm the identity of:

(a) the person giving verbal authorization, and

(b) the person picking up the child.

(8) A six-week record of each child's daily attendance, including sign-in and sign-out records, shall be kept on-site for review by the Department.

R381-100-12. Child Guidance and Interaction.

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) The provider shall inform parents, children, and those who interact with the children of the center's behavioral expectations and how any misbehavior will be handled.

(3) Individuals who interact with the children shall guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) Caregivers shall use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others, or from destroying property.

(5) Interactions with the children shall not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort such as hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

(6) Any person who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in Utah Code Section 62A-4a-403 and Section 62A-4a-411.

R381-100-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Harmful objects and hazards, such as the following, shall be inaccessible to children:

(a) poisonous and harmful plants;

(b) sharp objects, edges, corners, or points that could cut or puncture skin;

(c) for children younger than 3 years of age, choking hazards;

(d) strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck;

(e) tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways;

(f) for children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(g) standing water that measures 2 inches or deeper and 5 by 5 inches or greater in diameter.

(3) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(4) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(5) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(6) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(7) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(8) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in center vehicles any time a child is in care.

(9) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(11) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(12) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(13) Infant walkers with wheels shall be inaccessible to children.

(14) In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R381-100-14. Emergency Preparedness and Response.

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center or in an area clearly visible to anyone needing the information.

(2) The provider shall keep first-aid supplies in the center, including at least antiseptic, bandages, and tweezers.

(3) The provider shall conduct fire evacuation drills monthly. Drills shall include a complete exit of all children, staff, and volunteers from the building.

(4) The provider shall document each fire drill, including:

(a) the date and time of the drill,

(b) the number of children participating,

(c) the name of the person supervising the drill,

(d) the total time to complete the evacuation, and

(e) any problems encountered.

(5) The provider shall conduct drills for disasters other than fires at least once every 6 months.

(6) The provider shall document each disaster drill, including:

(a) the type of disaster, such as earthquake, flood, prolonged power or water outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(7) The provider shall vary the days and times on which fire and other disaster drills are held.

(8) The provider shall keep documentation of the previous 12 months of fire and disaster drills on-site for review by the Department.

(9) In case of an emergency or disaster, the provider and employees shall follow procedures as outlined in the center's health and safety plan.

(10) The provider shall give parents a written report of every incident, accident, or injury involving their child:

(a) the caregivers involved, the center director, and the person picking up the child shall sign the report on the day of occurrence; and

(b) if school-age children sign themselves out of the center, a copy of the report shall be sent to the parent on the day following the occurrence.

(11) If a child is injured and the injury appears serious but not life-threatening, the child's parent shall be contacted immediately.

(12) In the case of a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb:

(a) emergency personnel shall be called immediately;

(b) after emergency personnel are called, then the parent shall be contacted; and

(c) if the parent cannot be reached, staff shall try to contact the child's emergency contact person.

(13) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the Department within the next business day of the incident; or

(b) contact the Department within the next business day and submit a completed accident report form within 5 business days of the incident.

(14) The provider shall keep a six-week record of every incident, accident, and injury report on-site for review by the Department.

R381-100-15. Health and Infection Control.

(1) The building, furnishings, equipment, and outdoor area shall be kept clean and sanitary including:

(a) ceilings, walls, and flooring shall be clean and free

of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food shall be clean and sanitary;

(c) surfaces used by children shall be free of rotting food or a build-up of food;

(d) the building and grounds shall be free of a build-up of litter, trash, and garbage; and

(e) the facility shall be free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) All toys and materials including those used by infants and toddlers shall be cleaned:

(a) at least weekly or more often if needed,

(b) after being put in a child's mouth and before another child plays with the toy, and

(c) after being contaminated by a body fluid.

(4) Fabric toys and items such as stuffed animals, cloth dolls, pillows, and dress-up clothes shall be machine washable and washed weekly, and as needed.

(5) Highchair trays shall be cleaned and sanitized before each use.

(6) Water play tables or tubs shall be cleaned and sanitized daily, if used by the children.

(7) Bathroom surfaces including toilets, sinks, faucets, and counters shall be cleaned and sanitized each day.

(8) Potty chairs shall be cleaned and sanitized after each use.

(9) Toilet paper shall be accessible to children and kept in a dispenser.

(10) The provider shall post handwashing procedures that are readily visible from each handwashing sink and shall ensure that the procedures are followed.

(11) Staff and volunteers shall wash their hands thoroughly with liquid soap and running water at required times including:

(a) before handling or preparing food or bottles,

(b) before and after eating meals and snacks or feeding a child,

(c) after using the toilet or helping a child use the toilet,

(d) after contact with a body fluid,

(e) when coming in from outdoors, and

(f) after cleaning up or taking out garbage.

(12) Caregivers shall teach children how to wash their hands thoroughly and shall oversee handwashing whenever possible.

(13) The provider shall ensure that children wash their hands thoroughly with liquid soap and running water at required times including:

(a) before and after eating meals and snacks,

(b) after using the toilet,

(c) after contact with a body fluid,

(d) before using a water play table or tub, and

(e) when coming in from outdoors.

(14) Only single-use towels from a covered dispenser or an electric hand dryer may be used to dry hands.

(15) Personal hygiene items, such as toothbrushes, combs, and hair accessories, shall not be shared and shall be stored so they do not touch each other, or they shall be sanitized between each use.

(16) Pacifiers, bottles, and nondisposable drinking cups shall:

(a) be labeled with each child's name or individually identified; and

(b) not shared, or washed and sanitized before being used by another child.

(17) A child's clothing shall be promptly changed if the child has a toileting accident.

(18) Children's clothing that is wet or soiled from a body fluid shall:

(a) not be rinsed or washed at the center,

(b) be placed in a leakproof container that is labeled with the child's name, and

(c) be returned to the parent.

(19) Staff shall use a portable body fluid cleanup kit for cleaning up body fluid spills. The kit shall be:

(a) in a place easily accessed by staff, and

(b) restocked as needed.

(20) Staff shall take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, or vomit. Except for diaper changes and toileting accidents, staff shall:

(a) wear waterproof gloves;

(b) clean the surface using a detergent solution;

(c) rinse the surface with clean water;

(d) sanitize the surface;

(e) throw away in a leakproof plastic bag the disposable materials, such as paper towels, that were used to clean up the body fluid;

(f) wash and sanitize any nondisposable materials used to clean up the body fluid, such as cleaning cloths, mops, or reusable rubber gloves, before reusing them; and

(g) wash their hands after cleaning up the body fluid.

(21) A child who is ill with an infectious disease may not be cared for at the center except when the child shows signs of illness after arriving at the center.

(22) When a child becomes ill while in care:

(a) the provider shall contact the child's parent or, if the parent cannot be reached, an individual listed as the emergency contact to immediately pick up the child; and

(b) if the child is ill with an infectious disease, the child shall be made comfortable in a safe, supervised area that is separated from the other children until the parent arrives.

(23) When any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the illness is discovered.

(24) The provider shall post a notice at the center when any staff member or child has an infectious disease or parasite. The notice shall:

(a) not disclose any personal identifiable information,

(b) be posted in a conspicuous place where it can be seen by all parents,

(c) be posted and dated on the same day that the disease or parasite is discovered, and

(d) remain posted for at least 5 days.

(25) To prevent contamination of food, the spread of foodborne illnesses, and other diseases:

(a) individuals who prepare food in the kitchen shall not change diapers or help in toileting children;

(b) caregivers who care for diapered children shall only prepare food for the children in their care, and they shall not prepare food outside of the room used by the diapered children or prepare food for other children and adults in the facility; and

(c) individuals with an infectious disease or showing symptoms such as diarrhea, fever, and vomit shall not prepare or serve foods.

R381-100-16. Food and Nutrition.

(1)The provider shall ensure that each child age 2 years and older is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional

requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP menus, the standard Department-approved menus, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) providers who are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name,

(b) refrigerated if needed, and

(c) consumed only by that child.

R381-100-17. Medications.

(1) Nonrefrigerated medications shall be stored at least 48 inches above the floor or shall be locked.

(2) Refrigerated medications shall be stored at least 36 inches above the floor or shall be locked, and if liquid, they shall be stored in a separate leakproof container.

(3) All over-the-counter and prescription medications supplied by parents shall:

(a) be labeled with the child's full name,

(b) be kept in the original or pharmacy container,

(c) have the original label, and

(d) have child-safety caps.

(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.

(5) The medication permission form shall include:

(a) the name of the child,

(b) the name of the medication,

(c) written instructions for administration, and

(d) the parent signature and the date signed.

(6) The instructions for administering the medication shall include:

(a) the dosage,

(b) how the medication will be given,

(c) the times and dates to administer the medication, and

(d) the disease or condition being treated.

(7) If the provider supplies an over-the-counter medication for children's use, the medication shall not be administered to any child without previous parental consent for each instance it is given. The consent shall be:

(a) prior written consent; or

(b) verbal consent if the date and time of the consent is documented, and is signed by the parent upon picking up their child.

(8) The caregiver administering the medication shall:

(a) wash their hands,

(b) check the medication label to confirm the child's name if the parent supplied the medication,

(c) check the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer, and

(d) administer the medication.

(9) Immediately after administering a medication, the caregiver giving the medication shall record the following information:

(a) the date, time, and dosage of the medication given;

(b) any errors in administration or adverse reactions; and

(c) their signature or initials.

(10) The provider shall report a child's adverse reaction to a medication or error in administration to the parent immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.

(11) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication before the time the medication needs to be given.

(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the Department.

R381-100-18. Activities.

(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.

(2) Daily activities shall include outdoor play as weather and air quality allow.

(3) Physical development activities shall include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every 2 hours children spend in the program.

(4) For each preschool and school-age group, the provider shall post a daily schedule that includes:

(a) activities that support children's healthy development, and

(b) the times activities occur including at least meal, snack, nap or rest, and outdoor play times.

(5) Toys, materials, and equipment needed to support children's healthy development shall be available to the children.

(6) Except for occasional special events, children's screen time on media such as television, cell phones, tablets, and computers shall:

(a) not be allowed for children 0 to 17 months old;

(b) be limited for children 18 months to 4 years old to 1 hour per day, or 5 hours per week with a maximum screen time of 2 hours per activity; and

(c) be part of a media plan that addresses the needs of children 5 to 12 years old.

(7) If swimming activities are offered or if wading pools are used:

(a) the provider shall obtain parental permission before each child in care uses the pool;

(b) caregivers shall stay at the pool supervising whenever a child is in the pool or has access to the pool, and whenever a wading pool has water in it;

(c) diapered children shall wear swim diapers whenever they are in the pool;

(d) wading pools shall be emptied and sanitized after use by each group of children;

(e) if the pool is over 4 feet deep, there shall be a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(f) lifeguards and pool personnel shall not count toward the caregiver-to-child ratio.

(8) If offsite activities are offered:

(a) the provider shall obtain written parental consent before each activity;

(b) the required caregiver-to-child ratio and supervision shall be maintained during the entire activity;

(c) a first aid kit shall be available;

(d) children shall wear or carry with them the name and phone number of the center;

(e) children's names shall not be used on nametags, t-shirts, or in other visible ways; and

(f) there shall be a way for caregivers and children to wash their hands with soap and water, or if there is no source of running water, caregivers and children shall clean their hands with wet wipes and hand sanitizer.

(9) On every offsite activity, caregivers shall take the written emergency information and releases for each child in the group. The information shall include:

(a) the child's name,

(b) the parent's name and phone number,

(c) the name and phone number of a person to notify in case of an emergency if the parent cannot be contacted,

(d) the names of people authorized by the parents to pick up the child, and

(e) current emergency medical treatment and emergency medical transportation releases.

R381-100-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) The designated play surface on stationary play equipment used by infants or toddlers shall not exceed 3 feet in height.

(3) Swings used by infants or toddlers shall have enclosed seats.

(4) Stationary play equipment shall have a surrounding use zone that extends from the outermost edge of the equipment. With the exception of swings, stationary play equipment that is:

(a) used by infants or toddlers shall have at least a 3-foot use zone if any designated play surface is higher than 18 inches,

(b) used by preschoolers shall have at least a 6-foot use zone if any designated play surface is higher than 20 inches, and

(c) used by school-age children shall have at least a 6-foot use zone if any designated play surface is higher than 30 inches.

(5) The use zone in the front and rear of a single-axis, enclosed swing shall extend at least twice the distance of the swing pivot point to the swing seat.

(6) The use zone in the front and rear of a single-axis swing shall extend at least twice the distance of the swing pivot point to the ground.

(7) The use zone for the sides of a single-axis swing shall extend:

(a) at least 3 feet from the outermost edge of the swing if used by infants or toddlers, or

(b) at least 6 feet from the outermost edge of the swing if used by preschoolers or school-age children.

(8) The use zone for a multi-axis swing, such as a tire swing, shall extend:

(a) at least the measurement of the suspending rope or chain plus 3 feet, if the swing is used by infants or toddlers; or

(b) at least the measurement of the suspending rope or chain plus 6 feet, if the swing is used by preschoolers or school-age children.

(9) The use zone for a merry-go-round shall extend:

(a) at least 3 feet in all directions from its outermost edge if the merry-go-round is used by infants or toddlers, or

(b) at least 6 feet in all directions from its outermost edge if the merry-go-round is used by preschoolers or school-age children.

(10) The use zone for a spring rocker shall extend:

(a) at least 3 feet from the outermost edge of the rocker when at rest; or

(b) at least 6 feet from the outermost edge of the rocker when at rest if the seat is higher than 20 inches, and the rocker is used by preschoolers or school-age children.

(11) The following use zones shall not overlap the use zone of any other piece of play equipment:

(a) the use zone in front of a slide;

(b) the use zone in the front and rear of any single-axis swing, including a single-axis enclosed swing;

(c) the use zone of a multi-axis swing; and

(d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.

(12) Unless prohibited in R381-100-19(11), the use zones of play equipment may overlap when:

(a) the equipment is used by infants or toddlers, and there is at least 3 feet between the pieces of equipment; or

(b) the equipment is used by preschoolers or school-age children and there is at least 6 feet between the pieces of equipment if the designated play surface is 30 inches or lower, or there is at least 9 feet between the pieces of equipment if the designated play surface is higher than 30 inches.

(13) Stationary play equipment without moving parts children sit or stand on shall not be placed on concrete, asphalt, dirt, a bare floor, or any other hard surface, but may be placed on grass or other cushioning, if the highest designated play surface measures between:

(a) 6 to 18 inches if used by infants or toddlers,

(b) 6 to 20 inches if used by preschoolers, and

(c) 6 to 30 inches if used by school-age children.

(14) Protective cushioning shall cover the entire surface of each required use zone and its depth or thickness shall be determined by the highest designated play surface of the equipment.

(15) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 14.

(a) the provider shall ensure that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 14 if compacted; and

(b) if the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 14

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 7'	9"	not allowed	9"	not allowed	6"
Over 7' up to 8'	9"	not allowed	9"	not allowed	6"
Over 8' up to 9'	9"	not allowed	9"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	9"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not	not	not	not	6"

allowed allowed allowed allowed

(16) If shredded wood products are used as protective cushioning:

(a) the provider shall keep on-site for review by the Department documentation from the manufacturer that the wood product meets ASTM Specification F1292,

(b) there shall be adequate drainage under the material, and

(c) the depth of the shredded wood shall meet the CPSC guidelines in Table 15.

TABLE 15

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	9"	9"	9"
Over 8' up to 9'	9"	9"	9"
Over 9' up to 10'	9"	9"	9"
Over 10' up to 11'	9"	9"	9"
Over 11'	9"	not allowed	not allowed

(17) If a unitary cushioning is used, the provider shall ensure that the material meets the standard established in ASTM Specification F1292. The provider shall maintain on-site for review by the Department documentation from the manufacturer that the material meets these specifications.

(18) If a unitary cushioning is used, the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(19) A play equipment platform that is more than 18 inches above the floor or ground and used by infants or toddlers shall have a protective barrier that is at least 24 inches high.

(20) A play equipment platform that is more than 30 inches above the floor or ground and used by preschoolers shall have a protective barrier that is at least 29 inches high.

(21) A play equipment platform that is more than 48 inches above the floor or ground and used by school-age children shall have a protective barrier that is at least 38 inches high.

(22) There shall be no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(23) Stationary play equipment shall be stable and securely anchored.

(24) There shall be no trampolines on the premises that are accessible to any child in care.

(25) There shall be no heavy metal swings, such as animal-shaped swings, accessible to children.

(26) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(27) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(28) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(29) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

R381-100-20. Transportation.

If transportation services are offered:

(1) For each child being transported, the provider shall have a transportation permission form:

(a) signed by the parent, and

(b) on-site for review by the Department.

(2) Each vehicle used for transporting children shall:

(a) be enclosed with a roof or top,

(b) be equipped with safety restraints,

(c) have a current vehicle registration,

(d) be maintained in a safe and clean condition,

(e) contain a first aid kit, and

(f) contain a body fluid clean up kit.

(3) The safety restraints in each vehicle that transports children shall:

(a) be appropriate for the age and size of each child who is transported, as required by Utah law;

(b) be properly installed; and

(c) be in safe condition and working order.

(4) The driver of each vehicle who is transporting children shall:

(a) be at least 18 years old;

(b) have and carry with them a current, valid driver's license for the type of vehicle being driven;

(c) have with them the written emergency contact information for each child being transported;

(d) ensure that each child being transported is in an individual safety restraint that is used according to Utah law;

(e) ensure that the inside vehicle temperature is between 60-85 degrees Fahrenheit;

(f) never leave a child in the vehicle unattended by an adult;

(g) ensure that children stay seated while the vehicle is moving;

(h) never leave the keys in the ignition when not in the driver's seat; and

(i) ensure that the vehicle is locked during transport.

(5) When the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:

(a) each child being transported has a completed transportation permission form signed by their parent,

(b) a caregiver goes with the children and actively supervises them,

(c) the caregiver-to-child ratio is maintained, and

(d) caregivers take each child's written emergency contact information and releases with them.

R381-100-21. Animals.

(1) The provider shall inform parents of the kinds of animals allowed at the facility.

(2) There shall be no animal on the premises that:

(a) is naturally aggressive;

(b) has a history of dangerous, attacking, or aggressive behavior; or

(c) has a history of biting even one person.

(3) Animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.

(4) There shall be no animal or animal equipment in food preparation or eating areas.

(5) Children younger than 5 years of age shall not assist with the cleaning of animals or animal cages, pens, or equipment.

(6) If school-age children help in the cleaning of animals or animal equipment, the children shall wash their hands immediately after cleaning the animal or equipment.

(7) Children and staff shall wash their hands immediately after playing with or touching animals, including

reptiles and amphibians.

(8) Dogs, cats, and ferrets that are housed at the facility shall have current rabies vaccinations.

(9) The provider shall keep current animal vaccination records on-site for review by the Department.

R381-100-22. Rest and Sleep.

(1) The provider shall offer children in care a daily opportunity for rest or sleep in an environment with subdued lighting, a low noise level, and freedom from distractions.

(2) Nap or rest times shall not be scheduled for more than 2 hours daily.

(3) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.

(4) Sleeping equipment shall be kept in good repair, including mats and mattresses that shall have smooth, waterproof surfaces.

(5) Each crib shall:

(a) have a tight-fitting mattress;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance;

(d) not have strings, cords, ropes, or other entanglement hazards on the crib or within reach of the child; and

(e) meet CPSC standards.

(6) When in use, sleeping equipment such as cribs, cots, and mats shall be placed at least 2 feet apart.

(7) Sleeping equipment shall not block exits.

(8) During nap time, a sheet and blanket or acceptable alternative shall be made available to each child 12 months or older. These items shall be:

(a) clearly assigned to one child,

(b) stored separately from other children's bedding, and

(c) laundered as needed, but at least once a week, and before use by another child.

(9) Sleeping equipment that is clearly assigned to and used by an individual child shall be cleaned and sanitized as needed and at least weekly.

(10) Sleeping equipment that is not clearly assigned to and used by an individual child shall be cleaned and sanitized before each use.

(11) The provider shall store sleeping equipment so that:

(a) the surfaces children sleep on do not touch each other, or

(b) the provider shall clean and sanitize sleeping equipment before each use.

R381-100-23. Diapering.

If the provider accepts children who wear diapers:

(1) The provider shall post diapering procedures at each diapering station and ensure that they are followed.

(2) Caregivers shall ensure that each child's diaper is:

(a) checked at least once every 2 hours,

(b) promptly changed when wet or soiled, and

(c) checked as soon as a sleeping child awakens.

(3) The diapering area shall not be located in a food preparation or eating area.

(4) Caregivers shall change children's diapers at a diapering station. Diapers shall not be changed on surfaces used for any other purpose.

(5) The diapering surface shall be smooth, waterproof, and in good repair.

(6) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.

(7) Caregivers shall not leave children unattended on the diapering surface.

(8) Caregivers shall clean and sanitize the diapering surface after each diaper change, or use a disposable, waterproof diapering surface that is thrown away after each diaper change.

(9) Caregivers shall wash their hands after each diaper change.

(10) Caregivers shall place wet and soiled disposable diapers:

(a) in a container that has a disposable plastic lining and a tight-fitting lid,

(b) directly in an outdoor garbage container that has a tight-fitting lid, or

(c) in a container that is inaccessible to children.

(11) Indoor containers where wet and soiled diapers are placed shall be cleaned and sanitized each day.

(12) If cloth diapers are used:

(a) they shall not be rinsed at the facility; and

(b) they shall be placed directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or placed in a leakproof diapering service container.

R381-100-24. Infant and Toddler Care.

If the provider cares for infants or toddlers:

(1) Each awake infant and toddler shall receive positive physical and verbal interaction with a caregiver at least once every 20 minutes.

(2) To stimulate their healthy development, the provider shall ensure that infants receive daily interactions with adults; including on the ground interaction and closely supervised time spent in the prone position for infants less than 6 months of age.

(3) Infant and toddler areas shall not be used to pass through or access other indoor and outdoor areas.

(4) Infants and toddlers shall play in the same enclosed outdoor space with older children only when there are 8 or fewer children in the group.

(5) Caregivers shall respond promptly to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, a wet or soiled diaper, fear, teething, or illness.

(6) For their healthy development, safe toys shall be available for infants and toddlers. There shall be enough toys accessible to each infant and toddler in the group to engage in play.

(7) Mobile infants and toddlers shall have freedom of movement in a safe area.

(8) An awake infant or toddler shall not be confined for more than 30 minutes in any piece of equipment, such as a swing, high chair, crib, playpen, or other similar piece of equipment.

(9) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(10) Infants and toddlers shall not have access to objects made of styrofoam.

(11) Each infant and toddler shall be allowed to eat and sleep on their own schedule.

(12) Baby food, formula, or breast milk that is brought from home for an individual child's use shall be:

(a) labeled with the child's name;

(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated if needed; and

(d) discarded within 24 hours of preparation or opening, except for unprepared powdered formula or dry food.

(13) If an infant is unable to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(14) The caregiver shall swirl and test warm bottles for

temperature before feeding to children.

(15) Formula and milk, including breast milk, shall be discarded after feeding or within 2 hours of starting a feeding.

(16) Caregivers shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter, and shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(17) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. An infant shall not be placed to sleep on a mat, cot, pillow, bouncer, swing, car seat, or other similar piece of equipment unless the provider has written permission from the infant's parent.

(18) Infants shall be placed on their backs for sleeping unless there is documentation from a health care provider requiring a different sleep position.

(19) Caregivers shall document each infant's eating and sleeping patterns each day. The record shall:

(a) be completed within an hour of each feeding or nap, and

(b) include the infant's name, the food and beverages eaten, and the times the infant slept.

(20) Within an hour of each infant or toddler's diaper change, caregivers shall record:

(a) the infant or toddler's name,

(b) the time of the diaper change, and

(c) whether the diaper was dry, wet, soiled, or both.

(21) The provider shall maintain on-site for review by the Department a six-week record of:

(a) the eating and sleeping patterns for each infant; and

(b) the diaper changes for each infant and toddler.

KEY: child care facilities, child care, child care centers
December 28, 2017 26-39-203(1)(a)

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, 2017, 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;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual;

(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) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(21) General Attachments (All Providers) for the Utah Medicaid Provider Manual;

(22) Indian Health Utah Medicaid Provider Manual;

(23) Medical Transportation Utah Medicaid Provider Manual;

(24) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment;

(25) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(26) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;

(27) Physician Services Utah Medicaid Provider Manual with its attachments;

(28) Podiatric Services Utah Medicaid Provider Manual;

(29) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(30) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(31) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;

(32) School-Based Skills Development Services Utah Medicaid Provider Manual;

(33) Section I: General Information Utah Medicaid Provider Manual;

(34) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(35) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(36) Vision Care Services Utah Medicaid Provider Manual;

(37) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and

(38) 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;

(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. 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.

R414-1-29. Medicaid Policy for Reconstructive and Cosmetic Procedures.

(1) Reconstructive or restorative services are medically necessary; and

(a) performed on abnormal structures of the body to improve and restore bodily function; or

(b) performed to correct deformity resulting from disease, trauma, congenital anomaly, or previous therapeutic intervention.

(2) Medicaid does not cover cosmetic procedures performed with the primary intent to improve appearance, nor does it cover non-medically necessary procedures performed in the same episode as a covered procedure.

(3) Coverage for reconstructive breast procedures related to cancer includes:

(a) reconstruction of the breast on which the procedure is performed; and

(b) reconstruction of the breast on which the procedure is not performed to produce a symmetrical appearance and prostheses.

(4) Medicaid limits reconstructive breast surgeries to initial occurrences that may include multi-step procedures.

(5) Medicaid does not cover repeat reconstructive breast procedures.

R414-1-30. Face-to-Face Requirements for Home Health Services.

(1) Orders for home health services and certain durable medical equipment (DME) must be in accordance with 42 CFR 440.70.

(2) DME that requires face-to-face shall be the same as DME items required by Medicare.

(3) No home health agency or DME supplier may report services for reimbursement until they meet the face-to-face requirement.

R414-1-31. Withholding of Payments.

(1) In addition to other remedies allowed by law and unless specified otherwise, the Department may withhold payments to a provider if:

(a) the provider fails to provide the requested information within 30 calendar days from the date of a written request for information; or

(b) the provider has an outstanding balance owing the Department for any reason, including, but not limited to, claims adjustments or a provider assessment.

(2) The Department shall provide written notice before withholding payments.

(3) When the Department rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

KEY: Medicaid

January 1, 2018	**26-1-5**
Notice of Continuation February 15, 2017	**26-18-3**
	26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-2A. Inpatient Hospital Services.
R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid member for inpatient hospital care and treatment when the member meets established criteria for severity of illness and intensity of service and the required service cannot be provided in an alternative setting.

(2) "Inpatient" is an individual whose severity of illness and intensity of service requires continuous care in a hospital.

(3) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness.

(4) "Observation services" means services, often less than 24 hours, including use of a bed and monitoring by hospital staff, which are reasonable and necessary to evaluate the medical condition or determine the need for a possible admission to the hospital.

(5) "Prepaid Mental Health Plan" means the Medicaid mental and/or substance use disorder managed care plan that covers inpatient and/or outpatient mental health services and outpatient substance use disorder services for PMHP-enrolled Medicaid members.

R414-2A-3. Member Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals.

R414-2A-4. Hospital Admission Requirements.

(1) An inpatient hospital must meet Medicare participation requirements.

(2) Each hospital that provides inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(3) Each hospital that accepts a Medicaid member for treatment is responsible to verify that the member receives all medically necessary services from Medicaid providers.

(4) Each hospital is financially responsible for any services a member receives from a non-Medicaid provider.

R414-2A-5. Prepaid Mental Health Plan.

Before admitting a Prepaid Mental Health Plan (PMHP) member for an inpatient psychiatric stay, a hospital must obtain prior authorization from the PMHP serving the member's county of residence. If the hospital is not contracted with the PMHP, the PMHP may choose to transfer the member to a contracted hospital.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services must be medically necessary and ordered by an appropriate Medicaid-enrolled provider for the diagnosis and treatment of a member's illness.

(2) Services performed for a member by the admitting hospital or by an entity wholly-owned or wholly-operated by the hospital within three days of patient admission, are considered inpatient services. This three-day window applies to diagnostic and non-diagnostic services that are clinically related to the reason for the member's inpatient admission regardless of whether the inpatient, outpatient, or observation diagnoses are the same.

(3) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a member during an inpatient stay are reimbursed as part of payment under the Diagnosis Related Group (DRG).

(4) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient services as part of payment under the DRG, even if the stay is less than 24 hours.

(5) Medicaid may pay at least one-day inpatient admission for:

(a) Admission for a normal delivery;

(b) Admitted and expired;

(c) Admitted and transferred to a distinct part of or to another acute care hospital.

(6) Outpatient hospital services during an inpatient episode are bundled to the DRG.

(7) Inpatient hospital psychiatric services are available to all Medicaid members. If the member is not enrolled in a PMHP, providers may bill the State directly on a fee-for-service basis. Otherwise, the provider must bill the member's PMHP.

R414-2A-7. Limitations.

Inpatient hospital care is limited to medical treatment of symptoms that lead to medical stabilization of the member. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

(1) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the member is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(2) Abortion procedures require prior authorization. Refer to Rule R414-1B.

(3) Sterilization and hysterectomy procedures require prior authorization and must meet the requirements of 42 CFR 441, Subpart F.

(4) Organ transplant services are governed by Rule R414-10A.

(5) Take-home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(6) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society. Hyperbaric oxygen therapy is therapy that places the member in an enclosed pressure chamber for medical treatment.

(8) Medicaid does not cover inpatient services solely for pain management. Pain management is adjunct to other Medicaid services.

(9) Inpatient rehabilitation services require prior authorization.

(10) Observation services are limited to cases where observation and evaluation is required to establish a diagnosis and determine the appropriateness of an inpatient admission or discharge. Observation is used to monitor the member's condition, complete diagnostic testing to establish a definitive diagnosis and formulate the treatment plan.

(a) Medicaid covers observation services with a physician's written order that outlines specific medically necessary reasons for the service, such as the member requires more evaluation to determine the severity of illness (e.g. laboratory, imaging, other diagnostic test) and an order to continue monitoring for clinical signs and symptoms to determine improving or declining health status.

(b) Outpatient procedures include uneventful recovery period.

(i) Observation is used to monitor complications of outpatient procedures beyond uneventful recovery period.

(c) Medicaid does not cover observation services for convenience of the hospital, member or family, or when awaiting transfer to another facility.

(d) When an ordered hospital inpatient admission improves to the point of discharge with a stay less than 24 hours, the admission is covered as inpatient when documentation supports the medical necessity.

(e) Inpatient admissions solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(11) Medicaid does not cover admission solely for the treatment of eating disorders.

(12) Medicaid does not cover non-physician psychosocial counseling outside of the DRG.

(13) An individual (undocumented immigrant) who does not meet United States residency requirements may only receive emergency services, including emergency labor and delivery, to treat an emergency medical condition.

(a) Medicaid does not cover prenatal and post-partum services for undocumented immigrants.

(b) Medicaid does not cover prescriptions for a member who is eligible to receive emergency services only.

R414-2A-8. Provider-Preventable Conditions.

(1) Medicaid does not pay for Provider Preventable Conditions (PPC).

(a) Medicaid utilizes the Medicaid Severity-Diagnosis Related Group (MS-DRG) to identify a PPC.

(b) For inpatient hospital claims, Medicaid does not cover PPCs in Medicare crossover patients.

(c) To qualify as a PPC, one of the Medicare-listed diagnoses must develop during hospitalization.

(i) When present on admission, these diagnoses are not considered to be a PPC for that hospitalization.

(ii) Providers are expected to identify Present on Admission (POA) status for all diagnoses on each claim according to correct coding standards.

(d) Providers must assure that all PPC-related diagnoses, services, and charges are noted as "non-covered charges" on the claim.

(i) The Department does not use non-covered charges in calculating the hospital reimbursement.

(e) The Department shall deny PPC-related claims that result in an outlier payment and medical records will be required.

(i) Providers will receive Remittance Advice (RA) that confirms the occurrence of a PPC outlier claim.

(ii) The Department requires providers to know which medical records and other required documents are needed.

(iii) Upon RA notification of a PPC, the provider shall submit the following documents within 30 days:

(A) "Outlier PPC Medical Record Documentation Submission Form";

(B) Complete medical records from the associated hospital stay;

(C) Itemized bill (tab de-limited text file or Excel spreadsheet), including a detailed listing of PPC-related charges as non-covered charges, with total charges matching the total charges submitted on the claim.

(f) The Department will review and, if appropriate, re-process the claim based upon the review of the required documents submitted within the 30-day period of RA notification.

(g) The Department shall deny review of the claim unless the required documentation is submitted within 30 days of RA notification.

(h) The Department requires providers to report PPCs in accordance with Section R414-1-28.

R414-2A-9. Utilization Control and Review Program for Hospital Services.

The Hospital Utilization Review Program is administered and operated in accordance with Title 63A, Chapter 13.

(1) The purpose of the hospital utilization review program is to ensure:

(a) efficient and effective delivery of services;

(b) services are appropriate and medically necessary;

(c) service quality is maintained; and

(d) the State satisfies federal requirements for a statewide surveillance and utilization control program.

(2) The Hospital Utilization Review Program shall conduct assessments and audits to ensure the appropriateness and medical necessity of the following:

(a) Admissions to a hospital or a designated distinct part unit within a hospital;

(b) Transfers from one acute care hospital to another acute care hospital, or to a distinct part of a rehabilitation unit or psychiatric unit in another acute care hospital (inter-facility transfer);

(c) Transfers from an acute care setting to a distinct part rehabilitation or psychiatric unit within the same facility (intra-facility transfer);

(d) Continued stays;

(e) Services, surgical services and diagnostic procedures;

(f) Principal diagnosis, principal surgical procedure or both, reflected on paid claims to ensure consistency with the attending physician's determination and documentation as found in the member's medical record;

(g) Determine whether co-morbidity, as found on the claim, is correct and consistent with the attending physician's determination and compatible with documentation found in the member's medical record; and

(h) Quality of care.

(3) The Hospital Utilization Review Program shall conduct assessments and audits to determine:

(a) Appropriate utilization;

(b) Compliance with state and federal Medicaid regulations;

(c) Whether documentation meets state and federal requirements for sufficiency, and whether it accurately describes the status of services provided to the member; and

(d) Whether procedures that require prior authorization have been approved before the provision of services, except in cases that meet the criteria listed in the Utah Medicaid Section 1: General Information Provider Manual (Retroactive Authorization).

(4) The Hospital Utilization Review Program shall make determinations of medical necessitymedical necessity, appropriateness of care, and suitability of discharge planning in accordance with the following criteria and protocols:

(a) InterQual Criteria;

(b) Administrative rules or criteria developed by Medicaid for programs and services not otherwise addressed; and

(c) DRGs.

(5) Hospital Utilization Readmission Policy and Reviews.

(a) Whenever information available to the reviewer indicates the possibility of readmission to acute care within 30 days of the previous discharge, the staff administering and operating the Hospital Utilization Review Program may review any claim for:

(i) Readmission for the same or a similar diagnosis to the same hospital, or to a different hospital;

(ii) Appropriateness of inter-facility transfers; and

(iii) Appropriateness of intra-facility transfers.

(b) The Hospital Utilization Review Program shall review all suspected readmissions within 30 days of a previous discharge to ensure that Medicaid criteria have been met for severity of illness, intensity of service, and appropriate discharge planning and financial impact to the Department as noted in Subsection R414-2A-9(3).

(c) If a member is readmitted for the same or similar diagnosis within 30 days of discharge and, if after review as described in Subsection R414-2A-9(4)(b), program review staff determines that readmission does not meet the criteria in Subsection R414-2A-9(3)(b), then the payment shall be combined into a single DRG payment, unless it is cost effective to pay for two separate admissions. The first DRG (initial admission) shall be the DRG that is paid. This policy does not apply to cases related to pregnancy, neonatal jaundice, or chemotherapy.

(6) Definition, Policy Application.

(a) When applying policy, a similar diagnosis is defined as:

(i) Any diagnoses code with similar descriptors;

(ii) Any exchange or combination of principal and secondary diagnosis; and

(iii) Any other sets of principal diagnoses established to be similar by Utah Medicaid policy in written criteria and published to the hospitals prior to service dates.

(b) The evaluation criteria for utilization control are severity of illness, intensity of service, and cost effectiveness as noted in Subsection R414-2A-9(4)(b).

(7) Appropriate remedial action will be initiated for inappropriate readmissions when identified though the hospital utilization post-payment review process.

(8) Applicability to Outpatient Hospital Services.

(a) When a Medicaid member is readmitted to the hospital, or readmitted as an outpatient within 30 days of a previous discharge for the same or similar diagnosis, Medicaid will evaluate both claims to determine if they should be combined into a single payment or paid separately.

(9) Recovery of Funds.

(a) The Department shall recover payment when post-payment review finds that services are not medically necessary, not appropriate, or that quality of service is not suitable.

(b) The Department shall recover payment when it determines there is a violation of the 30-day re-admission policy.

(10) Hospital Utilization Review.

(a) Each month, the Hospital Utilization Review Program shall review at least 5 percent of a selected universe of claims adjudicated in the previous month. At least 2.5 percent of the claims shall be a random sample. Up to 2.5 percent may be a focused review on a specific service. A staff decision to focus on a specific service shall be made no later than the beginning of the sample cycle.

(b) The Department shall select the universe from paid inpatient hospital claims within the Data Warehouse. The universe from which the random sample is selected is defined as all inpatient hospital claims adjudicated before the beginning of the review cycle, except for:

(i) Claims showing, as a principal diagnosis, any International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) delivery code in the ICD-10-CM Manual Chapter 15 -- Pregnancy, Childbirth, and the Puerperium, in the range of O00 through O9A.53, and other ICD-10-CM codes or DRG or DRGs as specified by policy or administrative decision.

(ii) Claims that show $0 payment by Medicaid;

(iii) Medicare crossover claims;

(iv) Claims with other codes or diagnoses determined by the review program staff to be inappropriate for review.

(c) The sample cycle shall begin on the first working day of each month.

(11) Utah State Hospital Utilization Review.

(a) The purpose of this utilization review is to ensure that Medicaid funds, as defined under 42 CFR 456, Subpart D, are expended appropriately and to ensure that services provided to Medicaid members at the Utah State Hospital (USH) are necessary and of high quality. Review program staff shall conduct oversight activities at USH.

(b) Oversight activities include quarterly clinical utilization reviews in which program staff review a sample of members who are under 21 years of age and are 65 years of age or older, and who were reviewed by USH utilization review staff during a previous quarter. These reviews are performed to:

(i) Evaluate the USH utilization process; and

(ii) Address the clinical topic selected for that quarter's review.

(c) Reviews of USH Quality Improvement and Quality Assurance programs are conducted to determine whether:

(i) The programs have been implemented in accordance with written hospital policy;

(ii) The programs are effective in meeting stated goals;

(iii) Improvements or modifications have been made to increase the effectiveness of program design.

(12) Applicability to Inpatient Psychiatric Care and Inpatient Rehabilitation Services.

(a) Provisions in the Hospital Utilization Review Program also apply to inpatient psychiatric care and inpatient rehabilitation services.

R414-2A-10. Cost Sharing.

A Medicaid member is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-2A-11. Reimbursement.

Reimbursement for inpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid

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26-18-3.5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-42. Telemedicine.
R414-42-1. Introduction and Authority.

This rule outlines eligibility, access requirements, coverage, limitations, and reimbursement for telemedicine. This rule is authorized by Section 26-18-13.

R414-42-2. Definitions.

(1) "Telemedicine" is two-way, real-time interactive communication between the member and the physician or authorized provider at the distant site. This electronic communication uses interactive telecommunications equipment that includes, at a minimum, audio and video equipment.

(2) "Authorized provider" means a provider in compliance with requirements as specified in Section I: General Information of the Utah Medicaid Provider Manual, Chapter 3, Provider Participation and Requirements.

(3) "Distant site" is the location of the provider when delivering the service via the telecommunications system.

(4) "Originating site" is the location of the Medicaid member at the time the service is furnished via a telecommunications system.

R414-42-3. Covered Services.

Covered services may be delivered by means of telemedicine, as clinically appropriate. Services include consultation services, evaluation and management services, mental health services, and substance use disorder services.

R414-42-4. Limitations.

(1) Telemedicine encounters must comply with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to ensure that all patient communications and records, including recordings of telemedicine encounters, are secure and remain confidential. The provider is responsible for determining whether the encounter is HIPAA compliant. Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.

(2) Compliance with the Utah Health Information Network (UHIN) standards for telehealth must be maintained. These standards provide a uniform standard of billing for claims and encounters delivered via telehealth.

(3) The originating site receives no reimbursement for the use of telemedicine.

R414-42-5. Reimbursement of Services.

The Department pays the lesser of the amount billed or the rate on the fee schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60. Medicaid Policy for Pharmacy Program.
R414-60-1. Introduction.

The Medicaid Pharmacy program reimburses for covered outpatient drugs dispensed to eligible Medicaid clients by a pharmacy enrolled with Utah Medicaid pursuant to a prescription from an enrolled prescriber operating within the scope of the prescriber's license.

R414-60-2. Definitions.

(1) "Covered outpatient drug" means a drug that meets all of the following criteria:

(a) Requires a prescription for dispensing;

(b) Has a National Drug Code number;

(c) Is eligible for Federal Medical Assistance Percentages funds;

(d) Has been approved by the Food and Drug Administration; and

(e) Is listed in the nationally recognized drug pricing index under contract with the Department.

(2) "Full-benefit dual eligible beneficiary" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state of Utah, which is outside of Weber County, Davis County, Utah County, and Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" is the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects all advertised savings, discounts, special promotions, or any other program available to the general public.

R414-60-3. Client Eligibility Requirements.

(1) Medicaid covers prescription drugs for individuals who are categorically and medically needy under the Medicaid program.

(2) Outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries will not be covered under Medicaid in accordance with Subsection 1935(a) of the Social Security Act. Certain limited drugs provided in accordance with Subsection 1927(d)(2) of the Social Security Act to all Medicaid recipients, but not included in the Medicare Prescription Drug Benefit-Part D, are payable by Medicaid.

(3) Outpatient drugs included in contracts with the Accountable Care Organization (ACO) must be obtained through the ACO for clients enrolled in an ACO.[

R414-60-4. Program Coverage.

(1) Covered outpatient drugs eligible for Federal Medical Assistance Percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), when a multi-source A-rated legend drug is available in the generic form, Medicaid will only reimburse for the generic form of the drug unless:

(a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the State; or

(b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug.

(3) Prescriptions that are not executed electronically must be written on tamper-resistant prescription forms. Tamper-resistant prescription forms must include all of the following:

(a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(d) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

(e) Pharmacies must maintain documentation of receipt of a prescription by a Medicaid client or the client's authorized representative. The documentation must clearly identify the covered outpatient drug received by the client, the date the covered outpatient drug was received, and who received the covered outpatient drug.

(f) Claims for covered outpatient drugs not dispensed to a Medicaid client or the client's authorized representative within 10 days must be reversed and any payment from Medicaid must be returned.

R414-60-5. Limitations.

(1) Limitations may be placed on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Limitations are included in the Pharmacy Services Provider Manual and attachments, incorporated by reference in Section R414-1-5, and may include:

(a) Quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) Therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) Step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) Prior authorization.

(2) A covered outpatient drug that requires prior authorization may be dispensed for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Drugs provided to clients during inpatient hospital stays are not covered as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers only the following prescription cough and cold preparations meeting the definition of a covered outpatient drug:

(a) Guaifenesin with Dextromethorphan (DM) 600mg/30mg tablets;

(b) Guaifenesin with Hydrocodone 100mg/5mL liquid;

(c) Promethazine with Codeine liquid;

(d) Guaifenesin with Codeine 100mg/10mg/5mL liquid;

(e) Carbinoxamine with Pseudoephedrine 1mg/15mg/5mL liquid; and

(f) Carbinoxamine/Pseudoephedrine/DM

15mg/1mg/4mg/5mL liquid.

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medications included on the Utah Medicaid Generic Medication Three-Month Supply Medication List attachment to the Pharmacy Services Provider Manual may be covered for up to a three-month supply per dispensing. Medicaid clients eligible for Primary Care Network services under Rule R414-100 are not eligible to receive more than a one-month supply per dispensing.

(b) Prenatal vitamins for pregnant women, multiple vitamins with or without fluoride for children through five years of age, and fluoride supplements may be covered for up to a 90-day supply per dispensing.

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of narcotic analgesics. Medicaid will pay for a prescription refill for narcotic analgesics after 100% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) Drugs not eligible for Federal Medical Assistance Percentages funds;

(b) Drugs for anorexia, weight loss or weight gain;

(c) Drugs to promote fertility;

(d) Drugs for the treatment of sexual or erectile dysfunction;

(e) Drugs for cosmetic purposes or hair growth;

(f) Vitamins; except for prenatal vitamins for pregnant women, vitamin drops for children through five years of age, and fluoride supplements;

(g) Over-the-counter drugs not included in the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual;

(h) Drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(i) Drugs given by a hospital to a patient at discharge;

(j) Breast milk, breast milk substitutes, baby food, or medical foods, except for prescription metabolic products for congenital errors of metabolism;

(k) Drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Medicaid may only cover hemophilia clotting factor when it is dispensed by a single-contracted provider in accordance with the Utah Medicaid State Plan.

R414-60-6. Copayment Policy.

Medicaid clients are to pay any applicable copayment amount that complies with the requirements of the Utah Medicaid State Plan and Rule R414-1.

R414-60-7. Reimbursement.

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered-outpatient drugs are reimbursed at the lesser of the following:

(a) The Wholesale Acquisition Cost;

(b) The Federal Upper Limit assigned by the Centers for Medicare and Medicaid Services;

(c) The Utah Maximum Allowable Cost; and

(d) The submitted ingredient cost.

(e) If a prescriber obtains prior authorization for a brand-name version of a multi-source drug in accordance with 42 CFR 447.512 or if a brand-name drug is covered because a financial benefit will accrue to the State in accordance with Section 58-17b-606, then Medicaid will not apply the Utah Maximum Allowable Cost or Federal Upper Limit to the claim.

(f) Pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid must submit the actual acquisition cost of the medication on the claim.

(g) Pharmacies that participate in the Federal Supply Schedule and use medications obtained through the schedule to bill Utah Medicaid, must submit the actual acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or All Inclusive Rate.

(h) Pharmacies that obtain and use medications at a nominal price must submit the actual acquisition cost of the medication on the claim.

(i) The Utah Maximum Allowable Cost (UMAC) for drugs for which the Centers for Medicare and Medicaid Services (CMS) publishes a National Average Drug Acquisition Cost (NADAC), is the NADAC itself. The UMAC for which CMS does not publish a NADAC is calculated by the Department.

(3) Dispensing fees are as outlined in the Utah State Plan, Attachment 4.19-B as approved by CMS and as follows:

(a) Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee;

(b) Medicaid will only pay one dispensing fee per 24 days per covered outpatient drug per pharmacy.

(4) Medicaid will pay the lesser of the sum of the allowed amount for the covered outpatient drug and dispensing fee or the billed charges.

(5) Immunizations provided to Medicaid clients who are at least 19 years of age will be paid for the cost of the immunization plus a dispensing fee. Medicaid will pay the lesser of the allowed or submitted charges.

(6) Immunizations provided to Medicaid clients who are 18 years old or younger will only be eligible for a dispensing fee with no reimbursement for the immunization. Immunizations for Medicaid clients who are 18 years old or younger must be obtained through the Vaccines for Children program.

(7) Blood glucose test strips listed as preferred on the Utah Medicaid Preferred Drug List will be reimbursed at the lesser of the Wholesale Acquisition Cost with no dispensing fee or the billed charges.

(8) In accordance with the Utah Medicaid State Plan, the Department may only reimburse a single-contracted provider for the purchase of hemophilia clotting factor.

R414-60-8. Mandatory Patient Counseling.

(1) Medicaid clients, or their representatives, must receive counseling that fulfills the requirements of 42 U.S.C. 1396r-8 each time a covered outpatient medication is dispensed.

(2) Counseling is not required if a Medicaid client, or their representative, refuses the offer to counsel.

(3) The offer to counsel must be documented and producible upon request.

R414-60-9. New Drug Products.

A new drug product, including a new size or strength of an existing approved product, may be reviewed by the DUR Board to determine whether the drug should be subject to restrictions or limitations. New drugs may be withheld from coverage for no more than twelve weeks while restrictions or limitations are being evaluated.

R414-60-10. Over-the-Counter Drugs.

Medicaid covers over-the-counter drugs when the drug is

listed on the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual, incorporated by reference in Section R414-1-5.

R414-60-11. Compounds.

(1) Compounded non-sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage.

(2) Compounded sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage, and is prepared by a pharmacy that has certified to Utah Medicaid that it adheres to the United States Pharmacopeia/National Formulary chapter <797> standard, and tests the final product for sterility, potency and purity.

R414-60-12. Provider-Administered Drugs for the Treatment of Opioid Use Disorders.

A pharmacy may bill Medicaid for any covered, provider-administered drug not directly dispensed to a patient for the treatment of an opioid use disorder. The pharmacy may only release the drug to the administering provider or the provider's staff for treatment.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-515. Long Term Acute Care.
R414-515-1. Introduction and Authority.

This rule defines the scope of inpatient long-term acute care hospital (LTAC) services that are available to Medicaid members for the treatment of disorders other than mental disease.

This rule is authorized by Subsection 1886(d)(1)(B)(iv)(I) of the Social Security Act and Sections 26-1-5, 26-18-2.1, 26-18-2.3, and 26-18-3.

R414-515-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid member for LTAC care and treatment when the member meets established evidence-based criteria for severity of illness and intensity of service and the required service cannot be provided in a lesser level of care setting.

(2) "Comprehensive documentation" means applicable relevant information including a history and physical, operative reports, daily physician progress notes, vital signs, laboratory test results, medications administration records, respiratory therapy notes, wound care notes, nutrition notes, physical therapy notes, occupational therapy notes, speech therapy notes, and any other pertinent information the Division needs to make a decision regarding the LTAC request.

(3) "Continued stay review" means a periodic, supplemental, or interim review of clinical information for an LTAC member.

(4) "Episode of Care" means an LTAC stay from admission to discharge.

(5) "Inpatient" means an individual whose severity of illness and intensity of service meet the evidence-based criteria for an LTAC stay.

(6) "Intensity of Service" means measure of the number, technical complexity, or attendant risk of services provided.

(7) "Long-term acute care hospital" or "Long-term care hospital" means an inpatient transitional care hospital designed to treat members with multiple, serious medical conditions requiring intense, acute care as determined by a physician.

(8) "Retroactive review" means a review of clinical information for a patient who had previously been admitted to an LTAC, but never received a prior authorization for the initial or continued stay due to retroactive eligibility approval.

(9) "Severity of Illness" means the extent of organ system derangement or physiologic decompensation for a patient.

R414-515-3. Client Eligibility Requirements.

A patient must be eligible for Medicaid services.

R414-515-4. Program Access Requirements.

(1) A member must meet the severity of illness and intensity of service for LTAC level of care as determined through an evidence-based criteria review process.

(2) The evidence-based criteria subsets must be utilized correctly (e.g., the primary diagnosis cannot be used as a secondary diagnosis).

R414-515-5. Service Coverage.

(1) Add-on rates for tracheostomy and ventilator management may not be combined for members who are admitted to an LTAC.

(2) Only one unit per add-on (e.g., ventilator) per day is allowed.

(3) Only one physical evaluation, one occupational evaluation, and one speech therapy evaluation is allowed per episode of care unless it is medically necessary to receive additional evaluations.

(4) Dialysis and total parenteral nutrition services are ancillary services not covered in the LTAC rate. Providers who furnish these and any other ancillary services not included in the daily LTAC rate should submit claims for reimbursement to Medicaid directly.

(5) Prior authorization is not transferable from one LTAC to another.

(6) Prior authorization is required for preadmission, continued stay, and retroactive reviews.

(7) Each approved prior authorization is for a seven-day period.

(8) An LTAC provider must submit all current comprehensive documentation or the LTAC request will not be considered for coverage determination, and the Department will return the request as incomplete.

(9) Consideration of any LTAC coverage determination begins on the date in which the Department receives all current comprehensive documentation.

R414-515-6. Preadmission Review.

An LTAC provider shall submit prior authorization requests to the Department at least 24 hours before the expected admission.

R414-515-7. Continued Stay Review.

An LTAC provider shall submit prior authorization requests to the Department two days before the end of the approved period. The continued stay prior authorization request must include all pertinent medical record comprehensive documentation supporting the evidence-based LTAC continued stay review.

R414-515-8. Reimbursement Methodology.

Reimbursement for LTAC is in accordance with the Utah Medicaid State Plan.

KEY: Medicaid, long term acute care, LTAC
December 12, 2017 **26-1-5**
26-18-3

R414. Health, Health Care Financing, coverage and Reimbursement Policy.
R414-516. Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program.
R414-516-1. Introduction and Authority.

This rule defines the participation requirements for the Quality Improvement (QI) program within the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule only applies to NF providers who are part of a Contract with the Department to participate in the NF NSGO UPL program. This rule is authorized by Sections 26-1-5 and 26-18-3.

R414-516-2. Definitions.

The definitions in Rule R414-505 apply to this rule. In addition:

(1) "American Health Care Association (AHCA)" means the national association of long term and post-acute providers for quality care and services for frail, elderly, and disabled Americans.

(2) "Certification And Survey Provider Enhanced Reports (CASPER)" means a quality measure report used by the Centers for Medicare and Medicaid Services (CMS) to compare data between nursing facility programs.

(3) "Certified Nurse Aid (CNA)" means any person who completes a nurse aid training and competency evaluation program (NATCEP) and passes the state certification examination.

(4) "Division" means the Division of Medicaid and Health Financing (DMHF).

(5) "Eden Certification" means a program achieving Eden Milestones as approved by the Eden Alternative organization.

(6) "Fair Rental Value (FRV)" means the definition provided in Attachment 4.19-D of the Medicaid State Plan.

(7) "Five-Star Quality Rating System" means a rating system developed by CMS to help consumers, their families, and other caregivers compare health inspection reports, staffing, and quality measures (QM) between nursing programs.

(8) "Nurse" means an individual who is licensed under Title 58, Chapter 31b as:

(a) a licensed practical nurse (LPN);

(b) a registered nurse (RN);

(c) an advanced practice registered nurse (APRN); or

(d) a nurse practitioner (NP).

(9) "Program" means each distinct NF program participating in the NF NSGO UPL program.

(10) "Qualified Activity Professional" means:

(a) a qualified therapeutic recreation specialist or an activities professional who is licensed or registered in the state of Utah;

(b) an activities professional who is recognized by an accrediting body;

(c) a person who has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a therapeutic activities program;

(d) an occupational therapist (OT); or

(e) an occupational therapy assistant (OTA).

(11) "Qualified Clinician" means:

(a) a physician;

(b) a surgeon;

(c) a chiropractic physician;

(d) a physician assistant;

(e) a physical therapist;

(f) a physical therapist assistant;

(g) an OT; or

(h) an OTA.

(12) "Resident" means a Utah Medicaid eligible individual who resides in and receives nursing facility services in a Utah Medicaid-certified nursing facility.

R414-516-3. Quality Improvement Program Requirements of Participation.

(1) A program is required to earn quality improvement (QI) points to participate in the NF NSGO UPL Program. A program shall earn and document:

(a) In Calendar Year 2018, 10 or more QI points with a minimum of five QI points from Subsection R414-516-6;

(b) In Calendar Year 2019, 12 or more QI points with a minimum of six QI points from Subsection R414-516-6;

(c) In Calendar Year 2020 and beyond, 14 or more QI points with a minimum of seven from Subsection R414-516-6.

(2) QI points may be earned from any combination of the QI Program Categories as long as the minimum number of QI points are earned from Subsection R414-516-6.

(3) When calculating compliance under R414-516-6, a program shall not count residents who are in the facility less than 14 days.

(4) Each program shall submit to the Division a compliance form, using the current Division form, within 30 days of the end of the calendar year documenting that the program qualifies to earn points under the selected QI program categories. A compliance form must be mailed or electronically mailed to the correct address found at www.health.utah.gov/medicaid/stplan/longtermcarefqi.htm.

R414-516-4. Quality Measures and CASPER Reporting.

(1) A program may earn QI points through achieving the following quality awards, certifications, and ratings:

(2) The AHCA National Quality Award;

(a) A program that has earned the Gold AHCA quality award may earn six QI points for the duration of the award;

(b) A program that has earned the Silver AHCA quality award may earn four QI points for the duration of the award;

(c) A program that has earned the Bronze AHCA quality award may earn two QI points for the duration of the award.

(3) The HealthInsight Quality Award;

(a) A program that has earned a HealthInsight Quality Award may earn two QI points for the year awarded.

(4) The Quality Measures (QM) section of the Five-Star Quality Rating System;

(a) The Division shall determine all five-star quality ratings by the reports received and generated in the calendar year;

(b) A program that earns a 4.5 or greater QM average during the calendar year may earn three QI points;

(c) A program that earns a 3.5 to 4.49 QM average during the calendar year may earn two QI points;

(d) A program that has a Q3 and Q4 average that is greater than the Q1 and Q2 average may earn one QI point;

(5) Eden Certification Milestones; and

(a) A program that achieves an Eden Certification Milestone at the time of implementation of this rule may receive QI points in the same formula for a program achieving the initial milestone;

(b) A program may earn, in the initial year of the achievement, one QI point for achieving milestone one;

(c) A program may earn, in the initial year of the achievement, three QI points for achieving milestone two and two QI points the following year;

(d) A program may earn, in the initial year of the achievement, five QI points for achieving milestone three, three QI points the following year, and two QI points the third year.

(6) A program may earn QI points for:

(a) Having recent 12-month CASPER data (October through September) where the program was not above the 75th percentile, on average, in the comparison group national percentile in all CASPER measures. One QI point may be earned for this achievement;

(b) Demonstrating a 12-month (October through September) average rating below the 25th percentile in the comparison group national percentile in 13 of 17 CASPER measures. Four QI points may be earned for this achievement;

(c) Demonstrating a 12-month (October through September) average rating below the 25th percentile in the comparison group national percentile in 10 to 12 of 17 CASPER measures. Two QI points may be earned for this achievement;

(d) Demonstrating a 12-month (October through September) average rating below the 50th percentile in the comparison group national percentile in 13 of 17 CASPER measures. One QI point may be earned for this achievement;

(e) Having demonstrated a 20 percent improvement in two specific quality measures on the CASPER report at the end of the 12-month data (October through September) period as compared to the prior 12-month data period. One QI point may be earned for this achievement.

R414-516-5. Construction and Renovation.

A program may earn up to seven QI points by constructing or renovating its physical facility or increasing access to care by providing services in a rural county as follows:

(1) Constructing or renovating its physical facility:

(a) A program may earn seven QI points for having a FRV facility age of eight years or less;

(b) A program may earn five QI points for having a FRV facility age of fifteen years or less;

(c) A program may earn up to four QI points for using a percentage of UPL monies on facility renovations. The percentage is calculated by dividing the monies spent on a major renovation, replacement beds, or additional beds as reported in the program's audited FRV Data Report as described in the Attachment 4.19-D of the Medicaid State Plan, (numerator) by the amount of NF NSGO UPL monies paid in the same period as the FRV Data Reported renovation project (denominator).

(i) A program may earn four QI points for using greater than 75 percent of UPL monies.

(ii) A program may earn two QI points for using greater than 50 percent of UPL monies.

(2) Access to care by providing services to Medicaid members in a rural county.

(a) A program located in a county other than Cache, Davis, Salt Lake, Utah, Washington, or Weber may receive one QI point.

(b) A program located in an area where no other Utah Medicaid-certified nursing facility is within a 35-mile radius may receive one QI point.

R414-516-6. Direct Resident Services.

A program may earn QI points by providing Direct Resident Services and Staffing as follows:

(1) Providing employee retention programs. A program may earn up to four QI points for providing employee retention programs in the categories below:

(a) A program may earn one QI point by offering health insurance to all full-time employees;

(b) A program may earn one QI point by demonstrating improved staff retention of twenty percent facility wide compared to the previous calendar year. The program shall calculate staff retention by dividing the number of staff who separated from the program during the calendar year (numerator) by the number of all staff employed during the calendar year (denominator), and subtracting the retention percentage of the previous calendar year from the retention percentage of the current calendar year;

(c) A program may earn two QI points by demonstrating a staff turnover rate below 50 percent during the calendar year. The program shall calculate turnover rate by dividing the number of distinct staff who separated from the program during the calendar year (numerator) by the number of all distinct staff employed during the calendar year (denominator).

(d) A program may earn one QI point by offering:

(i) a 401K plan which includes an employer contribution; or

(ii) a pension or retirement program.

(e) A program may earn one (1) QI point by:

(i) providing tuition reimbursement for formal education;

(ii) providing reimbursement for continuing education; or

(iii) providing reimbursement for certification courses.

(2) Providing a denture replacement policy. A program may earn one QI point by providing a denture replacement policy where the program will replace lost or damaged dentures for residents within 90 days of the loss or damage.

(3) Providing staff training. A program may earn one QI point by providing staff training by a nursing facility industry-recognized source using virtual or onsite resources.

(4) Providing optional dining services. A program may earn up to three QI points for dining service options provided in the categories below:

(a) A program may earn one QI point for providing a menu option of at least five meal choices outside of the planned meal;

(b) A program may earn one QI point for providing a cook-to-order menu;

(c) A program may earn three QI points for providing a five-meal program for the entire calendar year; or

(d) A program may earn one QI point for providing a four-meal program for the entire calendar year.

(5) Providing a Preferred Snack Program with 80 percent compliance. A program may earn two QI points by providing distinct resident preferences for snacks.

(a) A program shall provide a snack survey including food and beverage options, snack time options, the date of the survey, and the name of the person completing the survey.

(b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

(c) A program shall provide the snack and beverage at each resident's preferred time.

(d) If a resident requires assistance for feeding, the facility shall provide a dining assistant during the snack.

(e) A program shall complete a snack survey for each distinct resident quarterly or as requested by the resident.

(f) The program shall calculate compliance by dividing the number of distinct residents who complete a preferred snack survey (numerator) by the number of distinct residents during the quarter, who desired to complete a snack survey (denominator).

(6) Providing a Preferred Bedtime Program with 80 percent compliance. A program may earn two QI points by providing resident preferences for bedtime.

(a) The program shall provide a bedtime survey, in which the resident was asked about preferred bedtime options and preferred rituals. The program must include the date of the survey and the name of the person who completed it.

(b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

(c) The program shall provide each resident their preferred bedtime options and rituals.

(d) The program shall complete a bedtime survey annually or as requested by the resident.

(e) The program shall calculate compliance by dividing the number of distinct residents who complete a bedtime survey (numerator) by the number of distinct residents during the calendar year, subtracted by the distinct residents who declined to complete a bedtime survey (difference is denominator).

(7) Providing consistent CNA or nursing staff assignments to residents with 80 percent compliance. A program may earn up to five QI points by providing consistent CNA or nursing staff assignments to residents. The points may be earned by providing the same CNA or nurse for a distinct resident for 32 waking hours during a standard Sunday through Saturday week.

(a) A program may earn one QI point for having a staffing schedule providing consistent CNA's and nurses for the entire program.

(b) The program may earn one QI point for providing consistent CNA assignment to a distinct hall containing at least 10 residents.

(c) The program may earn two QI points for providing consistent CNA assignment to an entire program.

(d) The program may earn one point for providing consistent nurse assignment to a hall containing at least 10 residents.

(e) A program may earn two QI points for providing consistent nurse assignment to an entire program.

(f) The program shall provide the consistent assignment for 40 of 52 weeks during the calendar year.

(g) The program shall calculate compliance by dividing the number of distinct residents who have consistent assignment in the hall or program (numerator) by the number of distinct residents during the calendar year in the hall or program (denominator).

(8) Providing a Range of Motion (ROM) program to residents with 80 percent compliance. A program may earn four QI points by providing ROM assessments to residents semi-annually by a qualified clinician; or, may earn two QI points by providing a ROM assessment to residents semi-annually by a restorative nurse aid under the direct supervision of a qualified clinician.

(a) The program shall include a ROM assessment for passive range of motion (PROM) or an active range of motion (AROM) assessment for shoulder, elbow, wrist, digits of the hand, hip, knee, and ankle joints. The program shall also include a ROM assessment of which joint has limitations, the reduced anatomical motion to the joint, how the restriction limits function, the title and name of the person completing the plan of care (POC), and the date of the POC.

(b) If a reduction in ROM is found and the clinician recommends a ROM POC, the POC shall include:

(i) a goal to return the resident to the highest practicable level of function;

(ii) the frequency and duration of the POC;

(iii) the title and name of the person completing the POC; and

(iv) the date of the POC.

(c) If the program develops a POC for a resident, a qualified clinician or another qualified professional shall complete the POC under the supervision of a qualified clinician.

(d) If a resident qualifies for a ROM POC, but desires not to participate, the qualified clinician shall document the refusal and provide a ROM assessment semi-annually.

(e) The program shall calculate compliance by dividing the number of distinct residents who received a ROM assessment semi-annually plus the number of residents refusing to complete a ROM assessment semi-annually (sum is numerator) by the number of distinct residents during the calendar year (denominator).

(9) Providing a One-on-One Activity program with 80% compliance. A program may earn up to four QI points by providing a one-on-one activity program. A one-on-one activity program shall provide a 30-minute minimum individual activity onsite or within the community each month for each resident; and

(a) A program may earn one QI point by providing a schedule for one-on-one activity participation for residents desiring to participate;

(b) A program may earn three QI points if compliant with providing one-on-one activities;

(c) A qualified activity professional shall complete an activity interest (AI) survey for each resident including recreational, educational, physical, arts and crafts, and any additional activity options preferred by the resident. The AI survey shall include the name and title of the surveyor and the date the survey was completed;

(d) For each resident who desires to participate in a one-on-one activity program:

(e) A qualified activity professional shall develop a POC including the preferred list of activities and a method of grading the importance of the activities to the resident. The activity POC shall include:

(i) the activities to be completed during the one-on-one activity;

(ii) the goal of the activity;

(iii) what the activity is promoting

(iv) the date the POC was completed; and

(v) the title and name of the person completing the POC.

(f) The person who completes the activity with the resident shall document:

(i) the preferred activity completed;

(ii) the duration of the activity;

(iii) the goal of the activity;

(iv) which quality of life measures were promoted; and

(v) any relevant comments made by the resident.

(g) The qualified activity professional shall modify the POC as appropriate or when requested by the resident.

(h) If a resident who desires to participate in the one-on-one activity program cannot participate in a given month, the nursing facility program shall document the refusal.

(i) If a resident refuses to participate in the one-on-one activity program, the qualified activity professional shall document the refusal and continue to complete an AI survey with the resident and offer the one-on-one activity program annually.

(j) If a resident who initially refuses to participate in a one-on-one activity program and desires to participate before the annual AI survey, the qualified activity professional shall complete the steps noted for residents desiring to participate in a one-on-one activity program.

(k) The program shall calculate compliance by adding the number of distinct residents who participated in but declined a monthly one-on-one activity, the number of distinct residents who completed the program, and the number of distinct residents who declined to complete the program (distinct sum is numerator) divided by the number of distinct residents during the calendar year (denominator).

(10) Providing a Mobility Program to qualifying residents with 80 percent compliance. A program may earn four QI points by providing a mobility program to qualifying residents. The nursing facility program shall offer residents who qualify for a walking program a walking activity five of seven days in a standard week for 40 out of 52 weeks during

the calendar year.

(a) A nurse shall complete the mobility and sit-stand survey and a one-step command (OSC) survey. The Division shall provide the mobility surveys.

(b) A resident who achieves a combined score of eight or higher on the mobility and sit-stand surveys and a score of one on the OSC survey qualifies to participate in a walking program.

(c) The nurse who completes the mobility surveys shall establish a POC for the walking program to determine:

(i) the distance of the walk;

(ii) duration of the walk; and

(iii) the amount of assistance required by the resident, including mobility devices to be provided by the staff.

(d) The nursing facility program shall provide weekly documentation to illustrate program completion, including modifications to a residents walking program.

(e) If a resident qualifies for but refuses to participate in a walking program, the nurse shall document the refusal and complete the mobility, sit-stand, and one-step command surveys annually.

(f) If a resident initially declines to participate in a walking program and then requests to engage in a walking program before the annual follow-up surveys, the program shall complete the survey and develop a walking POC for the resident.

(g) The nursing facility program shall calculate compliance by adding the number of distinct residents who completed the walking program with the distinct residents who qualified for but requested limited participation in the program, and residents who qualified for but declined participation in the walking program (distinct sum is numerator) by the number of distinct residents who qualified for a walking program during the calendar year (denominator).

R414-516-7. Exceptions and Holdings.

(1) A program that does not earn the minimum required QI points during a calendar year shall:

(a) earn the number of QI points not achieved from that calendar year in addition to the required QI points the subsequent calendar year; and

(b) submit to the Division a plan of correction that details how the program will come into compliance with the QI Program.

(c) A plan of correction shall be postmarked or show proof of delivery to the Division within 10 business days of the request.

(2) The Division shall remove from the UPL Seed Contract, a program that fails to earn the minimum QI points for a second consecutive year as required by Subsection R414-516-7(1)(a).

(a) Once the Division determines that the program failed to meet QI program qualifications, the Division shall send the program a notice of failure to meet the requirements.

(b) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

(c) If the program does not file an appeal or the Division's determination is upheld, the Division shall amend the UPL seed contract to remove the program effective the last day of the quarter in which the determination was made.

(3) If a program that has been removed from the UPL Seed Contract desires to be added back to the contract prospectively, the program shall demonstrate compliance to Subsection R414-516-3(1)(c) for one full year ("trial period") after the effective date of the removal.

(a) The program shall submit to the Division within 30 days of the trial period:

(i) the current compliance form; and

(ii) documentation of compliance with all QI programs in which points were earned.

(b) If the Division determines that the program was compliant during the trial period, the Division may add the program back to the UPL Seed Contract effective the first day of the quarter following the date compliance was determined.

(4) The Division may audit a program at any time to ensure compliance.

(a) The Division shall provide notice that indicates the period of the audit and the QI programs being audited.

(b) When an audit is performed, all documentation requested by the Division shall be postmarked or demonstrate proof of delivery to the Division within 10 business days of the request.

(c) Failure to submit the requested documentation in a timely manner shall result in the program forfeiting the QI points for the specific QI program category being audited.

(d) If an audit is completed, as applicable, the findings of the audit shall supersede the program's reported QI points.

(e) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

KEY: Medicaid
January 1, 2018 **26-1-5**
26-18-3

R428. Health, Center for Health Data, Health Care Statistics.
R428-1. Health Data Plan and Incorporated Documents.
R428-1-1. Legal Authority.

This rule is promulgated in accordance with Title 26, Chapter 33a.

R428-1-2. Purpose.

This rule adopts and incorporates documents related to the collection, analysis, and dissemination of data covered in this title.

R428-1-3. Health Data Plan Adoption.

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

R428-1-4. Incorporation by Reference.

The following documents are adopted and incorporated by reference:

(1) "Utah Healthcare Facility Data Submission Guide" means:

(a) Utah Healthcare Facility Data Submission Guide, Version 1, January 15, 2016 for data submissions required before February 16, 2018, and

(b) Utah Healthcare Facility Data Submission Guide, Version 2 for data submissions required on or after February 16, 2018;

(2) "NCQA Survey Specifications" means:

(a) HEDIS 2017, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required before January 1, 2018, and

(b) HEDIS 2018, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required on or after January 1, 2018;

(3) "NCQA HEDIS Specifications" means:

(a) HEDIS 2017, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required before January 1, 2018, and

(b) HEDIS 2018, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required on or after January 1, 2018;

(4) "Data Submission Guide for Claims Data" means:

(a) Utah All-Payer Claims Database Data Submission Guide Version 3.0 for data submissions required before March 1, 2018, and

(b) Utah All-Payer Claims Database Data Submission Guide Version 3.1 for data submissions required on or after March 1, 2018.

KEY: health, health policy, health planning
December 12, 2017 26-33a-104
Notice of Continuation November 10, 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).

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.

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R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-50. Residential Certificate Child Care.
R430-50-1. Legal Authority and Purpose.

(1) This rule is enacted and enforced in accordance with Utah Code, Title 26, Chapter 39.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in residential child care facilities and defines the general procedures and requirements to obtain and maintain a certificate to provide residential child care.

R430-50-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background screening that may result in a denial from Child Care Licensing.

(4) "Background Screening Denial" means that an individual has failed the background screening and is prohibited from being involved with a child care facility.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(8) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(9) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(10) "Child Care" means continuous care and supervision of 5 or more qualifying children, that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(11) "Child Care Hours" means the days and times during which the provider is open for business.

(12) "Child Care Program" means a person or business that offers child care.

(13) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(14) "Conditional Status" means that the provider is at risk of losing their certificate because compliance with licensing rules has not been maintained.

(15) "Covered Individual" means any of the following individuals involved with a child care facility:

(a) an owner;

(b) an employee;

(c) a caregiver;

(d) a volunteer, except a parent of a child enrolled in the child care program;

(e) an individual age 12 years or older who resides in the facility; and

(f) anyone who has unsupervised contact with a child in care.

(16) "CPSC" means the Consumer Product Safety Commission.

(17) "Department" means the Utah Department of Health.

(18) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(19) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(20) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(21) "Facility" means a child care program or the premises approved by the Department to be used for child care.

(22) "Group" means the children who are supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.

(23) "Group Size" means the number of children in a group.

(24) "Guest" means an individual who is not a covered individual and is on the premises with the provider's permission.

(25) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(26) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(27) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(28) "Infant" means a child who is younger than 12 months of age.

(29) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(30) "Involved with Child Care" means to do any of the following at or for a child care facility certified by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where child care is provided; or

(e) be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.

(31) "LIS Supported Finding" means background screening information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(32) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(33) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including

herbal remedies, vitamins, and mineral supplements.

(34) "Parent" means the parent or legal guardian of a child in care.

(35) "Person" means an individual or a business entity.

(36) "Physical Abuse" means causing nonaccidental physical harm to a child.

(37) "Preschooler" means a child age 2 through 4 years old.

(38) "Provider" means the legally responsible person or business that holds a valid certificate from Child Care Licensing.

(39) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(40) "Residential Child Care" means care that takes place in a child care provider's home.

(41) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(42) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(43) "School-Age Child" means a child age 5 through 12 years old.

(44) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(45) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(46) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(47) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(48) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as an open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(49) "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

(50) "Toddler" means a child age 12 through 23 months.

(51) "Unrelated Child" means a child who is not a "related child" as defined in R430-50-2(41).

(52) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background screening.

(53) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(54) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(55) "Working Days" means the days of the week the Department is open for business.

R430-50-3. Certificate Required.

(1) A person or persons shall be certified as a residential child care provider under this rule if they provide child care:

(a) in the home where they reside;

(b) in the absence of the child's parent;

(c) for 5 to 8 unrelated children;

(d) for 4 or more hours per day;

(e) on a regularly scheduled, ongoing basis; and

(f) for direct or indirect compensation.

(2) The Department may not certify, nor is a certificate is required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

(3) According to Foster Care Services rule R501-12-4(8)(f), a provider may not be certified to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

R430-50-4. Certificate Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care certificate shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of a completed Department health and safety plan form;

(f) CCL background screenings for all covered individuals as required in R430-50-8;

(g) a current copy of the Department's new provider training certificate of attendance;

(h) all required fees, which are nonrefundable; and

(i) a signed Affidavit of Lawful Presence form provided by the Department.

(2) The applicant shall pass a Department's inspection of the facility before a new certificate or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new certificate or a renewal of a certificate shall include compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;

(c) exit doors shall operate properly and shall be well maintained;

(d) obstructions in exits, aisles, corridors, and stairways shall be removed;

(e) items stored under exit stairs shall be removed;

(f) there shall be unobstructed fire extinguishers that are of an X minimum rate and appropriate to the type of hazard, currently charged and serviced, and mounted not more than 5 feet above the floor;

(g) there shall be working smoke detectors that are properly installed on each level of the building; and

(h) boiler, mechanical, and electrical panel rooms shall

not be used for storage.

(4) If the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new certificate or a renewal of a certificate shall include compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(f) chemicals shall be stored away from food and food service items;

(g) food shall be properly stored, kept to the proper temperature, and in good condition; and

(h) there shall be a working handwashing sink in the kitchen.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be certified, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a certificate if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care certificate expires at midnight on the last day of the month shown on the certificate, unless the certificate was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current certificate expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their certificate by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a certificate for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new certificate at least 30 days before a change of the child care facility's location.

(12) The provider shall submit a complete application to amend an existing certificate at least 30 days before any of the following changes:

(a) an increase or decrease of capacity, including any change to the amount of usable space where child care is provided;

(b) a change in the name of the program;

(c) a change in the regulation category of the program;

(d) a change in the name of the provider; or

(e) a transfer of business ownership to a spouse or to any other household member.

(13) The Department may amend a certificate after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended certificate remains the same as the previous certificate.

(14) A certificate is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R430-50-5. Rule Violations and Penalties.

(1) The Department may place a program's child care certificate on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The Department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The Department may increase monitoring of the program that is on conditional status to verify compliance with rules.

(4) The Department may deny or revoke a certificate if the child care provider:

(a) fails to meet the conditions of a certificate on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) misrepresents information by intentionally altering a certificate or any other document issued by the Department;

(e) refuses to allow authorized representatives of the Department access to the facility to ensure compliance with rules;

(f) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude a person from having a certificate.

(5) Within 10 working days of receipt of a revocation

notice, the provider shall submit to the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the revocation.

(6) The Department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect their health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child in care, the Department may order the child care provider to suspend services and/or prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

(9) If a person is providing care for more than 4 unrelated children without the appropriate certificate, the Department may:

(a) issue a cease and desist order, or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a certificate or a license,

(ii) conditions do not create a clear and present danger to the children in care, and

(iii) the person agrees to apply for the appropriate certificate or license within 30 calendar days of notification by the Department.

(10) If a person providing care without the appropriate certificate agrees to apply for a certificate but does not submit an application and all required application documents within 30 days, the Department may issue a cease and desist order.

(11) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code, Section 26-39-601.

(12) Assessment of any civil money penalty does not prevent the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a certificate.

(13) Assessment of any administrative civil money penalty under this section does not prevent court-ordered or other equitable remedies.

(14) The Department may deny an application or revoke a certificate for failure to pay any required fees, including fees for applications, late fees, returned checks, certificate changes, additional inspections, conditional monitoring inspections, background screenings, civil money penalties, and other fees assessed by the Department.

(15) An applicant or provider may appeal any Department decision within 30 days of being informed of the decision.

R430-50-6. Administration and Children's Records.

(1) The provider shall:

(a) be at least 18 years of age;

(b) pass a CCL background screening;

(c) demonstrate lawful presence in the United States;

(d) complete the new provider training offered by the Department; and

(e) complete at least 10 hours of child care training each year, based on the facility's certificate date.

(2) The provider shall not engage in or allow conduct that endangers children in care; or is contrary to the health, morals, welfare, and safety of the public.

(3) The provider shall have knowledge of and comply with all federal, state, and local laws, ordinances, and rules, and shall be responsible for the operation and management of a child care program.

(4) The provider shall comply with licensing rules at all times when a child in care is present.

(5) The provider shall post the original child care certificate on the facility premises in a place readily visible and accessible to the public.

(6) The provider shall post a copy of the Department's Parent Guide at the facility for parent review during business hours, or give each parent a copy of the guide at enrollment.

(7) The provider shall inform parents and the Department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(8) The provider shall establish, follow, and ensure that all staff and volunteers follow a written health and safety plan that is:

(a) completed on the Department's required form;

(b) submitted to the Department for initial approval and any time changes are made to the plan;

(c) reviewed and updated as needed;

(d) signed and dated at least annually; and

(e) available for review by parents, staff, and the Department during business hours.

(9) The provider shall ensure that each parent completes an admission and health assessment form for their child before the child is admitted into the child care program.

(10) The admission and health assessment form shall include the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of people authorized by the parent to pick up the child;

(e) name, address, and phone number of a person to be contacted in case of an emergency if the provider is unable to contact the parent;

(f) if available, the name, address, and phone number of an out-of-area emergency contact person for the child;

(g) current emergency medical treatment and emergency transportation releases with the parent's signature;

(h) any known allergies of the child;

(i) any known food sensitivities of the child;

(j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health care of the child;

(l) current ongoing medications that the child may be taking; and

(m) any other special health instructions for the caregiver.

(11) The admission and health assessment form shall:

(a) be reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the Department.

(12) Before admitting any child younger than 5 years of age into the child care program, including the provider's and employees' own children, the provider shall obtain the following documentation from the child's parent:

(a) current immunizations, as required by Utah law;

(b) a medical schedule to receive required immunizations;

(c) a legal exemption; or

(d) a 90-day exemption for children who are homeless.

(13) For each child younger than 5 years of age, including the provider's and employees' own children, the provider shall keep their current immunization records on-site for review by the Department.

(14) The provider shall submit the annual immunization report to the Immunization Program in the Utah Department

of Health by the date specified by the Department.

(15) Each child's information shall be kept confidential and shall not be released without written parental permission.

R430-50-7. Personnel and Training Requirements.

(1) The provider shall train and supervise employees and volunteers to ensure that they are qualified to:

(a) meet the needs of the children as required by rule, and

(b) be in compliance with all licensing rules.

(2) Each week, the provider shall be present at the home at least 50% of the time that any child is in care; and whenever a child is in care, the provider, a caregiver who is at least 18 years old, or a substitute with authority to act on behalf of the provider shall be present.

(3) Caregivers shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 10 hours of child care training each year, based on the facility's certificate date.

(4) Substitutes shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) be capable of providing care, supervising children, and handling emergencies in the provider's absence;

(d) receive at least 2.5 hours of preservice training before beginning job duties; and

(e) complete at least 1/2 hour of child care training for each month they work 40 hours or more.

(5) All other employees such as drivers, cooks, and clerks shall:

(a) pass a CCL background screening,

(b) receive at least 2.5 hours of preservice training before beginning job duties, and

(c) have knowledge of and follow all applicable laws and rules.

(6) Volunteers shall:

(a) pass a CCL background screening, and

(b) not have unsupervised contact with any child in care if the volunteer is younger than 18 years of age.

(7) Guests:

(a) shall not have unsupervised contact with any child in care, and

(b) are not required to pass a CCL background screening when they remain in the home for not more than 2 weeks.

(8) Any individual who stays in the home for more than 2 weeks shall be considered a household member and shall be required to pass a CCL background screening.

(9) Parents of children in care:

(a) shall not have unsupervised contact with any child in care except their own, and

(b) do not need a CCL background screening unless involved with child care in the facility.

(10) Household members who are:

(a) 12 to 17 years old shall pass a CCL background screening;

(b) 18 years of age or older shall pass a CCL background screening that includes fingerprints; and

(c) younger than 18 years of age shall not have unsupervised contact with any child in care including during offsite activities and transportation.

(11) Individuals who provide IEP or IFSP services such as physical, occupational, or speech therapists:

(a) are not required to have a CCL background screening as long as the child's parent has given permission for services to take place at the facility, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(12) Members from law enforcement or from Child Protective Services:

(a) are not required to have a CCL background screening, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(13) Preservice training shall include the following:

(a) job description and duties;

(b) current Department rule sections R430-50-7 through 24;

(c) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(d) prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(e) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(f) prevention of sudden infant death syndrome (SIDS) and the use of safe sleeping practices;

(g) recognizing the signs of homelessness and available assistance;

(h) a review of the information in each child's health assessment; and

(i) an introduction and orientation to the children in care.

(14) Annual child care training shall include the following topics:

(a) current Department rule sections R430-50-7 through 24;

(b) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(c) the prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(d) principles of child growth and development, including brain development;

(e) positive guidance and interactions with children;

(f) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(g) prevention of sudden infant death syndrome (SIDS) and use of safe sleeping practices; and

(h) recognizing the signs of homelessness and available assistance.

(15) At least 5 of the 10 hours of annual child care training shall be face-to-face instruction.

(16) Documentation of each individual's annual child care training shall be kept on-site for review by the Department and include the following:

(a) training topic,

(b) date of the training,

(c) whether the training was face-to-face or non-face-to-face instruction,

(d) name of the person or organization that presented the training, and

(e) total hours or minutes of training.

(17) At least one staff member with a current Red Cross, American Heart Association, or equivalent first aid and infant/child CPR certification shall be present when children are in care:

(a) at the facility,

(b) in each vehicle transporting children, and

(c) at each offsite activity.

(18) CPR certification shall include hands-on testing.

(19) The following records for each covered individual shall be kept on-site for review by the Department:

(a) a copy of the current background screening card

issued by the Department; and

(b) a current first aid and CPR certification, if required in rule.

R430-50-8. Background Screenings.

(1) The provider shall ensure that an online CCL background screening form is submitted within 10 working days from when:

(a) a new covered individual becomes involved with the program,

(b) a new covered individual age 12 years or older begins living in the facility, and

(c) a child who resides in the facility turns 12 years old.

(2) Unless an exception is granted in rule, the provider shall ensure that a CCL background screening for each individual age 18 years or older includes fingerprints and fingerprints fees.

(3) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(4) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(5) Fingerprints are not required if:

(a) the covered individual has resided in Utah continuously for the past 5 years, or since the individual's 18th birthday and will only be involved with child care in a program that was licensed or certified prior to 1 July 2013; or

(b) the covered individual has previously submitted fingerprints to the Department under this section for a national criminal history record check and has resided in Utah continuously since that time.

(6) Background screenings are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background screening card.

(7) At least 2 weeks before the end of the month that is written on a covered individual's background screening card, the provider shall:

(a) have the individual submit an online CCL background screening form,

(b) authorize the individual's background screening form, and

(c) pay all required fees.

(8) Regardless of any exception in rule, if an in-state criminal background screening indicates that a covered individual age 18 years or older has a background finding, the Department may require that individual to submit fingerprints and fees in order for the Department to conduct a national criminal background screening for that individual.

(9) The following background findings shall deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions,

(d) any Misdemeanor A convictions, or

(e) Misdemeanor B and C convictions for the reasons listed in R430-50-8(10).

(10) The following convictions, regardless of severity, may result in a background screening denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

(11) A covered individual with a Class A misdemeanor background finding not listed in R430-50-8(10) may be involved with child care when:

(a) 10 or more years have passed since the Class A misdemeanor offense, and

(b) there is no other conviction for the individual in the past 10 years.

(12) A covered individual with a Class A misdemeanor background finding not listed in R430-50-8(10) may be involved with child care for up to 6 months if:

(a) 5 to 9 years have passed since the offense,

(b) there is no other conviction since the Class A misdemeanor offense,

(c) the individual provides to the Department documentation of an active petition for expungement, and

(d) the provider ensures that the individual does not have unsupervised contact with any child in care.

(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.

(14) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background screening was conducted.

(15) The Department may rely on the criminal background screening findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a certificate or employment based on that evidence.

(16) If the provider has a background screening denial, the Department may suspend or deny their certificate until the reason for the denial is resolved.

(17) If a covered individual has a background screening denial, the Department may prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

(18) If a covered individual is denied a certificate or employment based upon the criminal background screening and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(19) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(20) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the certificate.

(21) The Executive Director of the Department of Health may overturn a background screening denial under the following conditions:

(a) the background finding is not a felony, and

(b) the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R430-50-9. Facility.

(1) There shall be at least 35 square feet of indoor space for each child in care, including the provider's children.

(2) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children,

(b) for the care of children, or

(c) to store classroom materials.

(3) The following areas are not included when measuring indoor space for children's use:

(a) bathrooms,

(b) closets,

(c) hallways, and

(d) entryways.

(4) The maximum allowed capacity for a child care facility may be limited by local ordinances.

(5) The number of children in care at any given time shall not exceed the capacity identified on the certificate.

(6) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their local health department within 5 working days and follow required procedures for remediation of the lead hazard.

(7) Each room and indoor area that is used by children shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(8) All rooms and areas that are used for child care shall have adequate light intensity for the safety of the children and the type of activity being conducted.

(9) There shall be a working telephone in the home, in each vehicle while transporting children, and during offsite activities.

(10) There shall be a working toilet and a working handwashing sink accessible to each nondiapered child in care.

(11) A bathroom that provides privacy shall be available for use by school-age children.

(12) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall meet applicable state and local laws and ordinances related to the operation of a swimming pool and maintain the pool in a safe manner; and

(b) when not in use, the pool shall be enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises, or enclosed with a locked, properly working safety cover that meets ASTM Specification F1346-91.

(13) A hot tub on the premises with water in it shall be inaccessible to children by being:

(a) kept locked with a properly working cover; or

(b) enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the hot tub from any other areas on the premises.

(14) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

(a) ceilings, walls, and floor coverings;

(b) lighting, bathroom, and other fixtures;

(c) draperies, blinds, and other window coverings;

(d) indoor and outdoor play equipment;

(e) furniture, toys, and materials accessible to the children;

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow and other hazards.

(15) Accessible raised decks or balconies that are 5 feet or higher, and open basement stairwells that are 5 feet or deeper shall have protective barriers that are at least 3 feet high.

(16) If the house is subdivided, any part of the house is rented out, or any other area of the facility is shared including the outdoor area, the entire facility shall be inspected and covered individuals in the facility shall comply with rules, except when all of the following conditions are met:

(a) there is a signed rental/lease agreement between the provider and the individual responsible for or living in the other part of the house;

(b) there is a separate mailing address;

(c) there is a separate entrance for the child care program;

(d) there are no connecting interior doorways that can be used by unauthorized individuals; and

(e) there is no shared access to the outdoor area used for child care, or a qualified caregiver is present when children are using a shared outdoor area of the facility.

(17) If there is an outdoor area used by children, R430-50-9(18) through R430-50-9(23) apply:

(18) The outdoor area shall be safely accessible to children.

(19) The outdoor area shall have at least 40 square feet of space for each child using the area at one time.

(20) The outdoor area shall be enclosed within a fence, wall, or solid natural barrier that is at least 4 feet high when the facility is on a street or within half a mile of a street that:

(a) has a speed of 25 miles per hour or higher, or

(b) has more than 2 lanes of traffic.

(21) The following hazards shall be separated from the children's outdoor area with a fence, wall, or solid natural barrier that is at least 4 feet high:

(a) barbed wire that is within 30 feet of the children's play area;

(b) livestock on or within 50 yards of the property line;

(c) dangerous machinery, such as farm equipment, on or within 50 yards of the property line;

(d) a drop-off of more than 5 feet on or within 50 yards of the property line; or

(e) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on or within 100 yards of the property line.

(22) There shall be no gap 5 by 5 inches or greater in or under the fence.

(23) Whenever there are children in the outdoor area, there shall be shade available to protect them from excessive sun and heat.

R430-50-10. Ratios and Group Size.

(1) The provider shall maintain at least 1 caregiver for up to 8 children in care.

(2) There shall be no more than 2 children younger than 2 years old in care including the provider's and employee's own children.

(3) The provider's or an employee's child age 4 years or older shall not be counted in the caregiver-to-child ratio when the parent of the child is working at the facility.

R430-50-11. Child Supervision and Security.

(1) The provider shall ensure that caregivers provide and maintain active supervision of each child at all times:

(a) a caregiver shall be inside the home when any child in care is inside the home,

(b) a caregiver shall be in the outdoor area when any child younger than 5 years old is in the outdoor area,

(c) caregivers shall know the number of children in their

care at all times, and

(d) caregivers' attention shall be focused on the children and not on the caregivers' own personal interests.

(2) A caregiver may allow only school-age children to play outdoors while the caregiver is indoors when:

(a) the caregiver can hear the children playing outdoors; and

(b) the children are in an area completely enclosed within a fence, wall, or solid natural barrier that is at least a 4 feet high.

(3) A caregiver shall monitor each sleeping infant by:

(a) placing each infant to sleep within the sight and hearing of the caregiver, or

(b) personally observing each sleeping infant at least once every 15 minutes.

(4) A child may participate in supervised offsite activities without the provider if:

(a) the provider has prior written permission from the child's parent for the child's participation, and

(b) the provider has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts that responsibility throughout the period of the offsite activity.

(5) Whenever a child is in care, the child's parent shall have access to their child and the areas used to care for their child.

(6) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out;

(b) only parents or persons with written authorization from the parent may sign out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, such as a signature, initials, or electronic code;

(e) the sign-in and sign-out records include the date and time each child arrives and leaves; and

(f) there is written permission from their parents if school-age children sign themselves in and out.

(7) In an emergency, the caregiver shall accept the parent's verbal authorization to release a child when the caregiver can confirm the identity of:

(a) the person giving verbal authorization, and

(b) the person picking up the child.

R430-50-12. Child Guidance and Interaction.

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) The provider shall inform parents, children, and those who interact with the children of the program's behavioral expectations and how any misbehavior will be handled.

(3) Individuals who interact with the children shall guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) Caregivers shall use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others, or from destroying property.

(5) Interactions with the children shall not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort such as hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

(6) Any person who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in Utah Code Section 62A-4a-403 and Section 62A-4a-411.

R430-50-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Harmful objects and hazards, such as the following, shall be inaccessible to children:

(a) poisonous and harmful plants;

(b) sharp objects, edges, corners, or points that could cut or puncture skin;

(c) for children younger than 3 years of age, choking hazards;

(d) strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck;

(e) tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways;

(f) for children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(g) standing water that is 2 inches or deeper and 5 by 5 inches or greater in diameter.

(3) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(4) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(5) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(6) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(7) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(8) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in program vehicles any time a child is in care.

(9) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and

standing ladders.

(11) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(12) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(13) Infant walkers with wheels shall be inaccessible to children.

(14) In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R430-50-14. Emergency Preparedness and Response.

(1) The provider shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near a telephone in the home or in an area clearly visible to anyone needing the information.

(2) The provider shall conduct fire evacuation drills at least once every 6 months. Drills shall include a complete exit of all children, staff, and volunteers from the home.

(3) The provider shall conduct drills for disasters other than fires at least once every 12 months.

(4) The provider shall vary the days and times on which fire and other disaster drills are held.

(5) In case of an emergency or disaster, the provider and all employees shall follow procedures as outlined in the facility's health and safety plan.

(6) If the provider must leave the premises due to an emergency, the provider may use an emergency substitute who was not named in the facility's health and safety plan.

(7) The emergency substitute:

(a) shall be at least 18 years old;

(b) is not required to have a CCL background screening; and

(c) is not required to meet the training, first aid, and CPR requirements of this rule.

(8) Before the provider may leave the children in the care of the emergency substitute, the provider shall first obtain a signed, written statement from the individual that they:

(a) have not been convicted of a felony or misdemeanor;

(b) do not have a substantiated background finding; and

(c) are not being investigated for abuse or neglect by any federal, state, or local government agency.

(9) The emergency substitute's written background statement shall be submitted to the Department for review within 5 working days after the occurrence.

(10) During the term of the emergency, the emergency substitute may be counted in the caregiver-to-child ratio.

(11) The provider shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care, and the amount of time shall not be more than 24 hours per emergency incident.

(12) The provider shall give parents a written report of every serious incident, accident, or injury involving their child:

(a) The caregivers involved, the provider, and the person picking up the child shall sign the report on the day of occurrence.

(b) If school-age children sign themselves out of the facility, a copy of the report shall be sent to the parent on the day following the occurrence.

(13) If a child is injured and the injury appears serious but not life-threatening, the child's parent shall be contacted immediately.

(14) In the case of a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb:

(a) emergency personnel shall be called immediately;

(b) after emergency personnel are called, then the parent shall be contacted;

(c) if the parent cannot be reached, staff shall try to contact the child's emergency contact person.

(15) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the Department within the next business day of the incident; or

(b) contact the Department within the next business day and submit a completed accident report form within 5 business days of the incident.

R430-50-15. Health and Infection Control.

(1) The building, furnishings, equipment, and outdoor area shall be kept clean and sanitary including:

(a) ceilings, walls, and flooring shall be clean and free of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food shall be clean and sanitary;

(c) surfaces used by children shall be free of rotting food or a build-up of food;

(d) the building and grounds shall be free of a build-up of litter, trash, and garbage; and

(e) the facility shall be free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) All toys and materials including those used by infants and toddlers shall be cleaned:

(a) at least weekly or more often if needed,

(b) after being put in a child's mouth and before another child plays with the toy, and

(c) after being contaminated by a body fluid.

(4) Fabric toys and items such as stuffed animals, cloth dolls, pillows, and dress-up clothes shall be machine washable and washed weekly, and as needed.

(5) Highchair trays shall be cleaned and sanitized before each use.

(6) Water play tables or tubs shall be cleaned and sanitized daily, if used by the children.

(7) Bathroom surfaces including toilets, sinks, faucets, and counters shall be cleaned and sanitized each day.

(8) Potty chairs shall be cleaned and sanitized after each use.

(9) Toilet paper shall be accessible to children and kept in a dispenser.

(10) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands.

(11) If cloth towels are used, they shall not be shared by children, caregivers, or volunteers.

(12) Staff and volunteers shall wash their hands thoroughly with soap and running water at required times including:

(a) before handling or preparing food or bottles,

(b) before and after eating meals and snacks or feeding a child,

(c) after using the toilet or helping a child use the toilet,

(d) after contact with a body fluid,

(e) when coming in from outdoors, and

(f) after cleaning up or taking out garbage.

(13) Caregivers shall teach children how to wash their

hands thoroughly and shall oversee handwashing whenever possible.

(14) The provider shall ensure that children wash their hands thoroughly with soap and running water at required times including:

(a) before and after eating meals and snacks,

(b) after using the toilet,

(c) after contact with a body fluid,

(d) before using a water play table or tub, and

(e) when coming in from outdoors.

(15) Personal hygiene items, such as toothbrushes, combs, and hair accessories, shall not be shared and shall be stored so they do not touch each other, or they shall be sanitized between each use.

(16) A child's clothing shall be promptly changed if the child has a toileting accident.

(17) Staff shall take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, and vomit. Except for diaper changes and toileting accidents, staff shall:

(a) wear waterproof gloves;

(b) clean the surface using a detergent solution;

(c) rinse the surface with clean water;

(d) sanitize the surface;

(e) throw away in a leakproof plastic bag the disposable materials, such as paper towels, that were used to clean up the body fluid;

(f) wash and sanitize any nondisposable materials used to clean up the body fluid, such as cleaning cloths, mops, or reusable rubber gloves, before reusing them; and

(g) wash their hands after cleaning up the body fluid.

(18) A child who becomes ill with an infectious disease while in care shall be made comfortable in a safe, supervised area that is separated from the other children.

(19) If a child becomes ill while in care, the provider shall contact the child's parent as soon as the illness is observed or suspected.

(20) The parents of every child in care shall be informed when any child, employee, or person in the home has an infectious disease or parasite. Parents shall be notified on the day the illness is discovered.

(21) When any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the illness is discovered.

R430-50-16. Food and Nutrition.

(1) The provider shall ensure that each child age 2 years and older is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP menus, the standard Department-approved menus, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) providers who are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name or individually identified,

(b) refrigerated if needed, and

(c) consumed only by that child.

R430-50-17. Medications.

(1) All medications shall be inaccessible to children.

(2) All liquid refrigerated medications shall be stored in a separate leakproof container.

(3) All over-the-counter and prescription medications supplied by parents shall:

(a) be labeled with the child's full name,

(b) be kept in the original or pharmacy container,

(c) have the original label, and

(d) have child-safety caps.

(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.

(5) The medication permission form shall include:

(a) the name of the child,

(b) the name of the medication,

(c) written instructions for administration, and

(d) the parent signature and the date signed.

(6) The instructions for administering the medication shall include:

(a) the dosage,

(b) how the medication will be given,

(c) the times and dates to administer the medication, and

(d) the disease or condition being treated.

(7) If the provider supplies an over-the-counter medication for children's use, the medication shall not be administered to any child without previous parental consent for each instance it is given. The consent shall be:

(a) prior written consent; or

(b) verbal consent if the date and time of the consent is documented, and is signed by the parent upon picking up their child.

(8) The caregiver administering the medication shall:

(a) wash their hands,

(b) check the medication label to confirm the child's name if the parent supplied the medication,

(c) check the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer, and

(d) administer the medication.

(9) Immediately after administering a medication, the caregiver giving the medication shall record the following information:

(a) the date, time, and dosage of the medication given;

(b) any errors in administration or adverse reactions; and

(c) their signature or initials.

(10) The provider shall report a child's adverse reaction to a medication or error in administration to the parent immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.

(11) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication before the time the medication needs to be given.

(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the Department.

R430-50-18. Activities.

(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.

(2) Physical development activities shall include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every 2 hours children spend in the program.

(3) Toys, materials, and equipment needed to support children's healthy development shall be available to the children.

(4) Except for occasional special events, children's screen time on media such as television, cell phones, tablets, and computers shall:

(a) not be allowed for children 0 to 17 months old;

(b) be limited for children 18 months to 4 years old to 1 hour per day, or 5 hours per week with a maximum screen time of 2 hours per activity; and

(c) be part of a media plan that addresses the needs of children 5 to 12 years old.

(5) If swimming activities are offered or if wading pools are used:

(a) the provider shall obtain parental permission before each child in care uses the pool;

(b) caregivers shall stay at the pool supervising whenever a child is in the pool or has access to the pool, and whenever a wading pool has water in it;

(c) diapered children shall wear swim diapers whenever they are in the pool;

(d) wading pools shall be emptied and sanitized after use by each group of children;

(e) if the pool is over 4 feet deep, there shall be a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(f) lifeguards and pool personnel shall not count toward the caregiver-to-child ratio.

(6) If offsite activities are offered:

(a) the provider shall obtain written parental consent before each activity;

(b) the required caregiver-to-child ratio and supervision shall be maintained during the entire activity;

(c) a first aid kit shall be available;

(d) children's names shall not be used on nametags, t-shirts, or in other visible ways; and

(e) there shall be a way for caregivers and children to wash their hands with soap and water, or if there is no source of running water, caregivers and children shall clean their hands with wet wipes and hand sanitizer.

(7) On every offsite activity, caregivers shall take the written emergency information and releases for each child in the group.

R430-50-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(3) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(4) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(5) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(6) There shall be no heavy metal swings, such as animal-shaped swings, accessible to children.

(7) Cushioning for stationary play equipment shall cover the entire surface of each required use zone.

(8) If ASTM cushioning is used, the provider shall keep on-site for review by the Department the documentation from the manufacturer that the material meets ASTM Specification F1292.

(9) Stationary play equipment with a designated play surface that measures 6 inches or higher shall not be placed on a hard surface such as concrete, asphalt, dirt, or the bare floor, but may be placed on grass or other cushioning.

(10) Except for trampolines, stationary play equipment that is 18 inches or higher shall:

(a) have a 3-foot use zone that is free of hard objects or surfaces and that extends from the outermost edge of the equipment; and

(b) be stable and securely anchored.

(11) A trampoline shall be considered accessible to children in care unless the trampoline:

(a) is enclosed behind at least a 3-foot high, locked fence or barrier;

(b) has no jumping mat;

(c) is placed upside down, or

(d) is enclosed within at least a 6-foot-high safety net that is locked.

(12) An accessible trampoline without a safety net enclosure shall be placed at least 6 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences.

(13) An accessible trampoline with a safety net enclosure shall be place at least 3 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences if the net:

(a) is properly installed and used as specified by the manufacturer,

(b) is in good repair, and

(c) is at least 6 feet tall.

(14) An accessible trampoline shall be placed over grass, 6-inch-deep cushioning, or ASTM-approved cushioning. Cushioning shall extend at least 6 feet from the outermost edge of the trampoline frame, or at least 3 feet from the outermost edge of the trampoline frame if a net is used as specified in R430-50-19(13).

(15) There shall be no ladders or other objects within the use zone of an accessible trampoline that a child could use to climb on the trampoline.

(16) An accessible trampoline shall have shock-absorbing pads that completely cover its springs, hooks, and frame.

(17) Before a child in care uses a trampoline, the child's parent shall sign a Department-approved permission form that the provider keeps on-site for review by the Department.

(18) When a trampoline is being used by a child in care:

(a) a caregiver shall be at the trampoline supervising,

(b) only one person at a time shall use a trampoline,

(c) no child in care shall be allowed to do somersaults or flips on the trampoline, and

(d) no one shall be allowed to play under the trampoline when it is in use.

R430-50-20. Transportation.

If transportation services are offered:

(1) For each child being transported, the provider shall have a transportation permission form:
(a) signed by the parent, and
(b) on-site for review by the Department.
(2) Each vehicle used for transporting children shall:
(a) be enclosed with a roof or top,
(b) be equipped with safety restraints,
(c) have a current vehicle registration,
(d) be maintained in a safe and clean condition,
(e) contain a first aid kit, and
(f) contain a body fluid clean up kit.
(3) The safety restraints in each vehicle that transports children shall:
(a) be appropriate for the age and size of each child who is transported, as required by Utah law;
(b) be properly installed; and
(c) be in safe condition and working order.
(4) The driver of each vehicle who is transporting children shall:
(a) be at least 18 years old;
(b) have and carry with them a current, valid driver's license for the type of vehicle being driven;
(c) have with them the written emergency contact information for each child being transported;
(d) ensure that each child being transported is in an individual safety restraint that is used according to Utah law;
(e) ensure that the inside vehicle temperature is between 60-85 degrees Fahrenheit;
(f) never leave a child in the vehicle unattended by an adult;
(g) ensure that children stay seated while the vehicle is moving;
(h) never leave the keys in the ignition when not in the driver's seat; and
(i) ensure that the vehicle is locked during transport.
(5) When the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:
(a) each child being transported has a completed transportation permission form signed by their parent,
(b) a caregiver goes with the children and actively supervises them,
(c) the caregiver-to-child ratio is maintained, and
(d) caregivers take each child's written emergency contact information and releases with them.

R430-50-21. Animals.
(1) The provider shall inform parents of the kinds of animals allowed at the facility.
(2) There shall be no animal on the premises that:
(a) is naturally aggressive;
(b) has a history of dangerous, attacking, or aggressive behavior; or
(c) has a history of biting even one person.
(3) Animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.
(4) There shall be no animal or animal equipment in food preparation or eating areas during food preparation or eating times.
(5) Children younger than 5 years of age shall not assist with the cleaning of animals or animal cages, pens, or equipment.
(6) If school-age children help in the cleaning of animals or animal equipment, the children shall wash their hands immediately after cleaning the animal or equipment.
(7) Children and staff shall wash their hands immediately after playing with or touching animals, including reptiles and amphibians.
(8) Dogs, cats, and ferrets that are housed at the facility shall have current rabies vaccinations.
(9) The provider shall keep current animal vaccination records on-site for review by the Department.

R430-50-22. Rest and Sleep.
(1) The provider shall offer children in care a daily opportunity for rest or sleep in an environment with subdued lighting, a low noise level, and freedom from distractions.
(2) Each crib used by children shall:
(a) have a tight-fitting mattress;
(b) have slats spaced no more than 2-3/8 inches apart;
(c) have at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without help;
(d) not have strings, cords, ropes, or other entanglement hazards on the crib or within reach of the child; and
(e) meet CPSC standards.
(3) Sleeping equipment may not block exits.
(4) Sleeping equipment and bedding items that are clearly assigned to and used by an individual child shall be cleaned and sanitized as needed and at least weekly.
(5) Sleeping equipment and bedding items that are not clearly assigned to and used by an individual child shall be cleaned and sanitized before each use.

R430-50-23. Diapering.
If the provider accepts children who wear diapers:
(1) Caregivers shall ensure that each child's diaper is:
(a) checked at least once every 2 hours,
(b) promptly changed when wet or soiled, and
(c) checked as soon as a sleeping child awakens.
(2) The diapering area shall not be located in a food preparation or eating area.
(3) Children shall not be diapered directly on the floor, or on any surface used for another purpose.
(4) The diapering surface shall be smooth, waterproof, and in good repair.
(5) Caregivers shall clean and sanitize the diapering surface after each diaper change, or use a disposable, waterproof diapering surface that is thrown away after each diaper change.
(6) Caregivers shall wash their hands after each diaper change.
(7) Caregivers shall place wet and soiled disposable diapers:
(a) in a container that has a disposable plastic lining and a tight-fitting lid,
(b) directly in an outdoor garbage container that has a tight-fitting lid, or
(c) in a container that is inaccessible to children.
(8) Indoor containers where wet and soiled diapers are placed shall be cleaned and sanitized each day.
(9) If cloth diapers are used:
(a) they shall not be rinsed at the facility; and
(b) they shall be placed directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or placed in a leakproof diapering service container.

R430-50-24. Infant and Toddler Care.
If the provider cares for infants or toddlers:
(1) Each awake infant and toddler shall receive positive physical and verbal interaction with a caregiver at least once every 20 minutes.
(2) To stimulate their healthy development, the provider shall ensure that infants receive daily interactions with adults; including on the ground interaction and closely supervised

time spent in the prone position for infants younger than 6 months of age.

(3) Caregivers shall respond promptly to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, a wet or soiled diaper, fear, teething, or illness.

(4) For their healthy development, safe toys shall be available for infants and toddlers. There shall be enough toys accessible to each infant and toddler in the group to engage in play.

(5) Mobile infants and toddlers shall have freedom of movement in a safe area.

(6) An awake infant or toddler shall not be confined for more than 30 minutes in any piece of equipment, such as a swing, high chair, crib, playpen, or other similar piece of equipment.

(7) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(8) Infants and toddlers shall not have access to objects made of styrofoam.

(9) Each infant and toddler shall be allowed to eat and sleep on their own schedule.

(10) Baby food, formula, or breast milk that is brought from home for an individual child's use shall be:

(a) labeled with the child's name;

(b) kept refrigerated if needed; and

(c) discarded within 24 hours of preparation or opening, except for unprepared powdered formula or dry food.

(11) If an infant is unable to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(12) The caregiver shall swirl and test warm bottles for temperature before feeding to children.

(13) Formula and milk, including breast milk, shall be discarded after feeding or within 2 hours of starting a feeding.

(14) Caregivers shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter, and shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(15) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. An infant shall not be placed to sleep on a mat, cot, pillow, bouncer, swing, car seat, or other similar piece of equipment unless the provider has written permission from the infant's parent.

(16) Infants shall be placed on their backs for sleeping unless there is documentation from a health care provider requiring a different sleep position.

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R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-90. Licensed Family Child Care.
R430-90-1. Legal Authority and Purpose.

(1) This rule is enacted and enforced in accordance with Utah Code, Title 26, Chapter 39.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in residential child care facilities and defines the general procedures and requirements to obtain and maintain a license to provide child care.

R430-90-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background screening that may result in a denial from Child Care Licensing.

(4) "Background Screening Denial" means that an individual has failed the background screening and is prohibited from being involved with a child care facility.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(8) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(9) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(10) "Child Care" means continuous care and supervision of 5 or more qualifying children, that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(11) "Child Care Hours" means the days and times during which the provider is open for business.

(12) "Child Care Program" means a person or business that offers child care.

(13) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(14) "Conditional Status" means that the provider is at risk of losing their license because compliance with licensing rules has not been maintained.

(15) "Covered Individual" means any of the following individuals involved with a child care facility:

(a) an owner;

(b) an employee;

(c) a caregiver;

(d) a volunteer, except a parent of a child enrolled in the child care program;

(e) an individual age 12 years or older who resides in the facility; and

(f) anyone who has unsupervised contact with a child in care.

(16) "CPSC" means the Consumer Product Safety Commission.

(17) "Department" means the Utah Department of Health.

(18) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(19) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(20) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(21) "Facility" means a child care program or the premises approved by the Department to be used for child care.

(22) "Group" means the children who are supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.

(23) "Group Size" means the number of children in a group.

(24) "Guest" means an individual who is not a covered individual and is on the premises with the provider's permission.

(25) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(26) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(27) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(28) "Infant" means a child who is younger than 12 months of age.

(29) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(30) "Involved with Child Care" means to do any of the following at or for a child care facility licensed by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where child care is provided; or

(e) be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.

(31) "License" means a license issued by the Department to provide child care services.

(32) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(33) "LIS Supported Finding" means background screening information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(34) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who

are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA).

(35) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

(36) "Parent" means the parent or legal guardian of a child in care.

(37) "Person" means an individual or a business entity.

(38) "Physical Abuse" means causing nonaccidental physical harm to a child.

(39) "Preschooler" means a child age 2 through 4 years old.

(40) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(41) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(42) "Residential Child Care" means care that takes place in a child care provider's home.

(43) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(44) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(45) "School-Age Child" means a child age 5 through 12 years old.

(46) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(47) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(48) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(49) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(50) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as an open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(51) "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

(52) "Toddler" means a child age 12 through 23 months.

(53) "Unrelated Child" means a child who is not a "related child" as defined in R430-90-2(43).

(54) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background screening.

(55) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(56) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(57) "Working Days" means the days of the week the Department is open for business.

R430-90-3. License Required.

(1) A person or persons shall be licensed under this rule if they provide child care:

(a) in the home where they reside;

(b) in the absence of the child's parent;

(c) for 5 to 16 unrelated children;

(d) for 4 or more hours per day;

(e) on a regularly scheduled, ongoing basis; and

(f) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

(3) According to Foster Care Services rule R501-12-4(8)(f), a provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

R430-90-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of a completed Department health and safety plan form;

(f) CCL background screenings for all covered individuals as required in R430-90-8;

(g) a current copy of the Department's new provider training certificate of attendance;

(h) all required fees, which are nonrefundable; and

(i) a signed Affidavit of Lawful Presence form provided by the Department.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;

(c) exit doors shall operate properly and shall be well maintained;

(d) obstructions in exits, aisles, corridors, and stairways shall be removed;

(e) items stored under exit stairs shall be removed;

(f) there shall be unobstructed fire extinguishers that are of an X minimum rate and appropriate to the type of hazard, currently charged and serviced, and mounted not more than 5 feet above the floor;

(g) there shall be working smoke detectors that are properly installed on each level of the building; and

(h) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall include compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(f) chemicals shall be stored away from food and food service items;

(g) food shall be properly stored, kept to the proper temperature, and in good condition; and

(h) there shall be a working handwashing sink in the kitchen.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new license at least 30 days before a change of the child care facility's location.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

(b) a change in the name of the program;

(c) a change in the regulation category of the program;

(d) a change in the name of the provider; or

(e) a transfer of business ownership to a spouse or to any other household member.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R430-90-5. Rule Violations and Penalties.

(1) The Department may place a program's child care license on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The Department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The Department may increase monitoring of the program that is on conditional status to verify compliance with rules.

(4) The Department may deny or revoke a license if the child care provider:

(a) fails to meet the conditions of a license on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) misrepresents information by intentionally altering a license or any other document issued by the Department;

(e) refuses to allow authorized representatives of the Department access to the facility to ensure compliance with rules;

(f) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude a person from having a license.

(5) Within 10 working days of receipt of a revocation notice, the provider shall submit to the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the revocation.

(6) The Department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect their health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the Department the names and mailing addresses of the parents of each enrolled child so the Department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child in care, the Department may order the child care provider to suspend services and/or prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

(9) If a person is providing care for more than 4 unrelated children without the appropriate license, the Department may:

(a) issue a cease and desist order, or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a license,

(ii) conditions do not create a clear and present danger to the children in care, and

(iii) the person agrees to apply for the appropriate license within 30 calendar days of notification by the Department.

(10) If a person providing care without the appropriate license agrees to apply for a license but does not submit an application and all required application documents within 30 days, the Department may issue a cease and desist order.

(11) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code, Section 26-39-601.

(12) Assessment of any civil money penalty does not prevent the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license.

(13) Assessment of any administrative civil money penalty under this section does not prevent court-ordered or other equitable remedies.

(14) The Department may deny an application or revoke a license for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional inspections, conditional monitoring inspections, background screenings, civil money penalties, and other fees assessed by the Department.

(15) An applicant or provider may appeal any Department decision within 30 days of being informed of the decision.

R430-90-6. Administration and Children's Records.

(1) The provider shall:

(a) be at least 18 years of age;

(b) pass a CCL background screening;

(c) demonstrate lawful presence in the United States;

(d) complete the new provider training offered by the Department; and

(e) complete at least 20 hours of child care training each year, based on the facility's license date.

(2) The provider shall not engage in or allow conduct that endangers children in care; or is contrary to the health, morals, welfare, and safety of the public.

(3) The provider shall have knowledge of and comply with all federal, state, and local laws, ordinances, and rules, and shall be responsible for the operation and management of a child care program.

(4) The provider shall comply with licensing rules at all times when a child in care is present.

(5) The provider shall post the original child care license on the facility premises in a place readily visible and accessible to the public.

(6) The provider shall post a copy of the Department's Parent Guide at the facility for parent review during business hours, or give each parent a copy of the guide at enrollment.

(7) The provider shall inform parents and the Department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(8) The provider shall establish, follow, and ensure that all staff and volunteers follow a written health and safety plan that is:

(a) completed on the Department's required form;

(b) submitted to the Department for initial approval and any time changes are made to the plan;

(c) reviewed and updated as needed;

(d) signed and dated at least annually; and

(e) available for review by parents, staff, and the Department during business hours.

(9) The provider shall ensure that each parent completes an admission and health assessment form for their child before the child is admitted into the child care program.

(10) The admission and health assessment form shall include the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of people authorized by the parent to pick up the child;

(e) name, address, and phone number of a person to be contacted in case of an emergency if the provider is unable to contact the parent;

(f) if available, the name, address, and phone number of an out-of-area emergency contact person for the child;

(g) current emergency medical treatment and emergency transportation releases with the parent's signature;

(h) any known allergies of the child;

(i) any known food sensitivities of the child;

(j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health care of the child;

(l) current ongoing medications that the child may be taking; and

(m) any other special health instructions for the caregiver.

(11) The admission and health assessment form shall:

(a) be reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the Department.

(12) Before admitting any child younger than 5 years of age into the child care program, including the provider's and employees' own children, the provider shall obtain the following documentation from the child's parent:

(a) current immunizations, as required by Utah law;

(b) a medical schedule to receive required immunizations;

(c) a legal exemption; or

(d) a 90-day exemption for children who are homeless.

(13) For each child younger than 5 years of age, including the provider's and employees' own children, the provider shall keep their current immunization records on-site for review by the Department.

(14) The provider shall submit the annual immunization report to the Immunization Program in the Utah Department of Health by the date specified by the Department.

(15) Each child's information shall be kept confidential and shall not be released without written parental permission.

R430-90-7. Personnel and Training Requirements.

(1) The provider shall train and supervise employees and volunteers to ensure that they are qualified to:

(a) meet the needs of the children as required by rule, and

(b) be in compliance with all licensing rules.

(2) Each week, the provider shall be present at the home at least 50% of the time that any child is in care; and whenever a child is in care, the provider, a caregiver who is at least 18 years old, or a substitute with authority to act on behalf of the provider shall be present.

(3) Caregivers shall:

(a) be at least 16 years old;

(b) pass a CCL background screening;

(c) receive at least 2.5 hours of preservice training before beginning job duties;

(d) have knowledge of and follow all applicable laws and rules; and

(e) complete at least 20 hours of child care training each year, based on the facility's license date.

(4) Substitutes shall:

(a) be at least 18 years old;

(b) pass a CCL background screening;

(c) be capable of providing care, supervising children, and handling emergencies in the provider's absence;

(d) receive at least 2.5 hours of preservice training before beginning job duties; and

(e) complete at least 1.5 hours of child care training for each month they work 40 hours or more.

(5) All other employees such as drivers, cooks, and clerks shall:

(a) pass a CCL background screening,

(b) receive at least 2.5 hours of preservice training before beginning job duties, and

(c) have knowledge of and follow all applicable laws and rules.

(6) Volunteers shall:

(a) pass a CCL background screening, and

(b) not have unsupervised contact with any child in care if the volunteer is younger than 18 years of age.

(7) Guests:

(a) shall not have unsupervised contact with any child in care, and

(b) are not required to pass a CCL background screening when they remain in the home for not more than 2 weeks.

(8) Any individual who stays in the home for more than 2 weeks shall be considered a household member and shall be required to pass a CCL background screening.

(9) Parents of children in care:

(a) shall not have unsupervised contact with any child in care except their own, and

(b) do not need a CCL background screening unless involved with child care in the facility.

(10) Household members who are:

(a) 12 to 17 years old shall pass a CCL background screening;

(b) 18 years of age or older shall pass a CCL background screening that includes fingerprints; and

(c) younger than 18 years of age shall not have unsupervised contact with any child in care including during offsite activities and transportation.

(11) Individuals who provide IEP or IFSP services such as physical, occupational, or speech therapists:

(a) are not required to have a CCL background screening as long as the child's parent has given permission for services to take place at the facility, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(12) Members from law enforcement or from Child Protective Services:

(a) are not required to have a CCL background screening, and

(b) shall provide proper identification before having access to the facility or a child at the facility.

(13) Preservice training shall include the following:

(a) job description and duties;

(b) current Department rule sections R430-90-7 through 24;

(c) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(d) prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(e) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(f) prevention of sudden infant death syndrome (SIDS) and the use of safe sleeping practices;

(g) recognizing the signs of homelessness and available assistance;

(h) a review of the information in each child's health assessment; and

(i) an introduction and orientation to the children in care.

(14) Documentation of each individual's preservice training shall be kept on-site for review by the Department and include the following:

(a) training topics,

(b) date of the training, and

(c) total hours or minutes of training.

(15) Annual child care training shall include the following topics:

(a) current Department rule sections R430-90-7 through 24;

(b) the Department-approved health and safety plan that includes preparing for and responding to emergencies;

(c) the prevention, signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(d) principles of child growth and development, including brain development;

(e) positive guidance and interactions with children;

(f) prevention of shaken baby syndrome and abusive head trauma, and coping with crying babies;

(g) prevention of sudden infant death syndrome (SIDS) and use of safe sleeping practices; and

(h) recognizing the signs of homelessness and available assistance.

(16) At least 10 of the 20 hours of annual child care training shall be face-to-face instruction.

(17) Individuals who are required to receive annual child care training and who begin employment partway through the facility's license year shall complete a proportionate number of training hours including the face-to-face instruction.

(18) Documentation of each individual's annual child care training shall be kept on-site for review by the Department and include the following:

(a) training topic,

(b) date of the training,

(c) whether the training was face-to-face or non-face-to-face instruction,

(d) name of the person or organization that presented

the training, and

(e) total hours or minutes of training.

(19) Whenever there are children present, there shall be at least one caregiver present who can demonstrate English literacy skills needed to care for children and respond to emergencies.

(20) At least one staff member with a current Red Cross, American Heart Association, or equivalent first aid and infant/child CPR certification shall be present when children are in care:

(a) at the facility,

(b) in each vehicle transporting children, and

(c) at each offsite activity.

(21) CPR certification shall include hands-on testing.

(22) The following records for each covered individual shall be kept on-site for review by the Department:

(a) the date of initial employment or association with the program;

(b) a copy of the current background screening card issued by the Department;

(c) a current first aid and CPR certification, if required in rule; and

(d) a six-week record of the times worked each day.

R430-90-8. Background Screenings.

(1) The provider shall ensure that an online CCL background screening form is submitted within 10 working days from when:

(a) a new covered individual becomes involved with the program,

(b) a new covered individual age 12 years or older begins living in the facility, and

(c) a child who resides in the facility turns 12 years old.

(2) Unless an exception is granted in rule, the provider shall ensure that a CCL background screening for each individual age 18 years or older includes fingerprints and fingerprints fees.

(3) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(4) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(5) Fingerprints are not required if:

(a) the covered individual has resided in Utah continuously for the past 5 years, or since the individual's 18th birthday and will only be involved with child care in a program that was licensed or certified prior to 1 July 2013; or

(b) the covered individual has previously submitted fingerprints to the Department under this section for a national criminal history record check and has resided in Utah continuously since that time.

(6) Background screenings are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background screening card.

(7) At least 2 weeks before the end of the month that is written on a covered individual's background screening card, the provider shall:

(a) have the individual submit an online CCL background screening form,

(b) authorize the individual's background screening form, and

(c) pay all required fees.

(8) Regardless of any exception in rule, if an in-state criminal background screening indicates that a covered individual age 18 years or older has a background finding, the Department may require that individual to submit fingerprints and fees in order for the Department to conduct a national criminal background screening for that individual.

(9) The following background findings shall deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions,

(d) any Misdemeanor A convictions, or

(e) Misdemeanor B and C convictions for the reasons listed in R430-90-8(10).

(10) The following convictions, regardless of severity, may result in a background screening denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

(11) A covered individual with a Class A misdemeanor background finding not listed in R430-90-8(10) may be involved with child care when:

(a) 10 or more years have passed since the Class A misdemeanor offense, and

(b) there is no other conviction for the individual in the past 10 years.

(12) A covered individual with a Class A misdemeanor background finding not listed in R430-90-8(10) may be involved with child care for up to 6 months if:

(a) 5 to 9 years have passed since the offense,

(b) there is no other conviction since the Class A misdemeanor offense,

(c) the individual provides to the Department documentation of an active petition for expungement, and

(d) the provider ensures that the individual does not have unsupervised contact with any child in care.

(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.

(14) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background screening was conducted.

(15) The Department may rely on the criminal background screening findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

(16) If the provider has a background screening denial, the Department may suspend or deny their license until the reason for the denial is resolved.

(17) If a covered individual has a background screening denial, the Department may prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

(18) If a covered individual is denied a license or employment based upon the criminal background screening and disagrees with the information provided by the

Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(19) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(20) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

(21) The Executive Director of the Department of Health may overturn a background screening denial under the following conditions:

(a) the background finding is not a felony, and

(b) the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R430-90-9. Facility.

(1) There shall be at least 35 square feet of indoor space for each child in care, including the provider's and employees' children.

(2) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

(a) by children,

(b) for the care of children, or

(c) to store classroom materials.

(3) The following areas are not included when measuring indoor space for children's use:

(a) bathrooms,

(b) closets,

(c) hallways, and

(d) entryways.

(4) The maximum allowed capacity for a child care facility may be limited by local ordinances.

(5) The number of children in care at any given time shall not exceed the capacity identified on the license.

(6) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their local health department within 5 working days and follow required procedures for remediation of the lead hazard.

(7) Each room and indoor area that is used by children shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(8) All rooms and areas that are used for child care shall have adequate light intensity for the safety of the children and the type of activity being conducted.

(9) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(10) There shall be a working telephone in the home, in each vehicle while transporting children, and during offsite activities.

(11) There shall be a working toilet and a working handwashing sink accessible to each nondiapered child in care.

(12) A bathroom that provides privacy shall be available for use by school-age children.

(13) There shall be an outdoor area that is safely accessible to children.

(14) The outdoor area shall have at least 40 square feet of space for each child using the area at one time.

(15) The outdoor area shall be enclosed within a fence, wall, or solid natural barrier that is at least 4 feet high when the facility is on a street or within half a mile of a street that:

(a) has a speed of 25 miles per hour or higher, or

(b) has more than 2 lanes of traffic.

(16) The following hazards shall be separated from the children's outdoor area with a fence, wall, or solid natural barrier that is at least 4 feet high:

(a) barbed wire that is within 30 feet of the children's play area;

(b) livestock on or within 50 yards of the property line;

(c) dangerous machinery, such as farm equipment, on or within 50 yards of the property line;

(d) a drop-off of more than 5 feet on or within 50 yards of the property line; or

(e) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on or within 100 yards of the property line.

(17) There shall be no gap 5 by 5 inches or greater in or under the fence.

(18) Whenever there are children in the outdoor area, there shall be shade available to protect them from excessive sun and heat.

(19) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall meet applicable state and local laws and ordinances related to the operation of a swimming pool and maintain the pool in a safe manner; and

(b) when not in use, the pool shall be enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises, or enclosed with a locked, properly working safety cover that meets ASTM Specification F1346-91.

(20) A hot tub on the premises with water in it shall be inaccessible to children by being:

(a) kept locked with a properly working cover; or

(b) enclosed within at least a 4-foot-high fence or solid barrier that is kept locked and that separates the hot tub from any other areas on the premises.

(21) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

(a) ceilings, walls, and floor coverings;

(b) lighting, bathroom, and other fixtures;

(c) draperies, blinds, and other window coverings;

(d) indoor and outdoor play equipment;

(e) furniture, toys, and materials accessible to the children;

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow and other hazards.

(22) Accessible raised decks or balconies that are 5 feet or higher, and open basement stairwells that are 5 feet or deeper shall have protective barriers that are at least 3 feet high.

(23) If the house is subdivided, any part of the house is rented out, or any other area of the facility is shared including the outdoor area, the entire facility shall be inspected and covered individuals in the facility shall comply with rules, except when all of the following conditions are met:

(a) there is a signed rental/lease agreement between the provider and the individual responsible for or living in the other part of the house;

(b) there is a separate mailing address;

(c) there is a separate entrance for the child care program;

(d) there are no connecting interior doorways that can be used by unauthorized individuals; and

(e) there is no shared access to the outdoor area used for

child care, or a qualified caregiver is present when children are using a shared outdoor area of the facility.

R430-90-10. Ratios and Group Size.

(1) The provider shall maintain at least 1 caregiver for up to 8 children in care, and at least 2 caregivers for 9 to 16 children in care.

(2) The provider's or an employee's child age 4 years or older is not counted in the caregiver-to-child ratio when the parent of the child is working at the facility, but the child shall be counted in the group size.

(3) When caring for children younger than 2 years old:

(a) there shall be no more than 2 children younger than 2 years old with 1 caregiver;

(b) there shall be no more than 4 children younger than 2 years old with 2 caregivers; and

(c) if there are 6 or fewer children in care, there may be up to 3 children younger than 2 years old with 1 caregiver.

(4) The provider shall not exceed the group sizes found in Table 1 and Table 2.

TABLE 1

MAXIMUM GROUP SIZE WITH 1 PROVIDER

# of Provider's and Caregivers' Own Children Ages 4-12 Years Present During Child Care Hours	Maximum Allowed # of Children in Care, Including the Provider's and Caregivers' Own Children Younger than 4 years old	Total # of Children Through age 12 Years Present in the Home During Child Care Hours
0-4 Children	8 children	12 Children
5 Children	7 children	12 Children
6 Children	6 children	12 Children
7 Children	5 children	12 Children
8 Children	4 children	12 Children
9 Children	3 children	12 Children
10 Children	2 children	12 Children
11 Children	1 child	12 Children

TABLE 2

MAXIMUM GROUP SIZE WITH 2 CAREGIVERS

# of Provider's and Caregivers' Own Children Ages 4-12 Years Present During Child Care Hours	Maximum Allowed # of Children in Care, Including the Provider's and Caregivers' Own Children Younger than 4 years old	Total # of Children Through age 12 Years Present in the Home During Child Care Hours
0-8 Children	16 children	24 Children
9 Children	15 children	24 Children
10 Children	14 children	24 Children
11 Children	13 children	24 Children
12 Children	12 children	24 Children
13 Children	11 children	24 Children
14 Children	10 children	24 Children
15 Children	9 children	24 Children
16 Children	8 children	24 Children
17 Children	7 children	24 Children
18 Children	6 children	24 Children
19 Children	5 children	24 Children
20 Children	4 children	24 Children
21 Children	3 children	24 Children
22 Children	2 children	24 Children
23 Children	1 child	24 Children

(5) Caregivers who are 16 or 17 years old may be included in the caregiver-to-child ratio only when there is a caregiver who is at least 18 years on the premises.

(6) Volunteers may be included in the caregiver-to-child ratio if they:

(a) are at least 16 years old,

(b) receive at least 2.5 hours of preservice training before counting in the caregiver-to-child ratio, and

(c) complete at least 1.5 hours of child care training for each month they volunteer 40 hours or more.

(7) Guests shall not count in the caregiver-to-child ratio.

R430-90-11. Child Supervision and Security.

(1) The provider shall ensure that caregivers provide and maintain active supervision of each child at all times:

(a) a caregiver shall be inside the home when any child in care is inside the home,

(b) a caregiver shall be in the outdoor area when any child younger than 5 years old is in the outdoor area,

(c) caregivers shall know the number of children in their care at all times, and

(d) caregivers' attention shall be focused on the children and not on the caregivers' own personal interests.

(2) A caregiver may allow only school-age children to play outdoors while the caregiver is indoors when:

(a) the caregiver can hear the children playing outdoors; and

(b) the children are in an area completely enclosed within a fence, wall, or solid natural barrier that is at least a 4 feet high.

(3) A caregiver shall monitor each sleeping infant by:

(a) placing each infant to sleep within the sight and hearing of the caregiver, or

(b) personally observing each sleeping infant at least once every 15 minutes.

(4) A child may participate in supervised offsite activities without the provider if:

(a) the provider has prior written permission from the child's parent for the child's participation, and

(b) the provider has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts that responsibility throughout the period of the offsite activity.

(5) Whenever a child is in care, the child's parent shall have access to their child and the areas used to care for their child.

(6) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out;

(b) only parents or persons with written authorization from the parent may sign out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, such as a signature, initials, or electronic code;

(e) the sign-in and sign-out records include the date and time each child arrives and leaves; and

(f) there is written permission from their parents if school-age children sign themselves in and out.

(7) In an emergency, the caregiver shall accept the parent's verbal authorization to release a child when the caregiver can confirm the identity of:

(a) the person giving verbal authorization, and

(b) the person picking up the child.

(8) A six-week record of each child's daily attendance, including sign-in and sign-out records, shall be kept on-site for review by the Department.

R430-90-12. Child Guidance and Interaction.

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) The provider shall inform parents, children, and those who interact with the children of the program's

behavioral expectations and how any misbehavior will be handled.

(3) Individuals who interact with the children shall guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) Caregivers shall use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others, or from destroying property.

(5) Interactions with the children shall not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort such as hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

(6) Any person who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in Utah Code Section 62A-4a-403 and Section 62A-4a-411.

R430-90-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Harmful objects and hazards, such as the following, shall be inaccessible to children:

(a) poisonous and harmful plants;

(b) sharp objects, edges, corners, or points that could cut or puncture skin;

(c) for children younger than 3 years of age, choking hazards;

(d) strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck;

(e) tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways;

(f) for children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(g) standing water that is 2 inches or deeper and 5 by 5 inches or greater in diameter.

(3) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(4) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(5) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(6) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(7) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(8) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in program vehicles any time a child is in care.

(9) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(11) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(12) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(13) Infant walkers with wheels shall be inaccessible to children.

(14) In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R430-90-14. Emergency Preparedness and Response.

(1) The provider shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near a telephone in the home or in an area clearly visible to anyone needing the information.

(2) The provider shall keep first-aid supplies in the home, including at least antiseptic, band-aids, and tweezers.

(3) The provider shall conduct fire evacuation drills quarterly. Drills shall include a complete exit of all children, staff, and volunteers from the home.

(4) The provider shall document each fire drill, including:

(a) the date and time of the drill,

(b) the number of children participating,

(c) the total time to complete the evacuation, and

(d) any problems encountered.

(5) The provider shall conduct drills for disasters other than fires at least once every 12 months.

(6) A provider shall document each disaster drill, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(7) The provider shall vary the days and times on which fire and other disaster drills are held.

(8) The provider shall keep documentation of the previous 12 months of quarterly fire drills and annual disaster drills on-site for review by the Department.

(9) In case of an emergency or disaster, the provider and all employees shall follow procedures as outlined in the facility's health and safety plan.

(10) If the provider must leave the premises due to an emergency, the provider may use an emergency substitute who was not named in the facility's health and safety plan.

(11) The emergency substitute:

(a) shall be at least 18 years old;

(b) is not required to have a CCL background screening; and

(c) is not required to meet the training, first aid, and CPR requirements of this rule.

(12) Before the provider may leave the children in the care of the emergency substitute, the provider shall first obtain a signed, written statement from the individual that they:

(a) have not been convicted of a felony or misdemeanor;

(b) do not have a substantiated background finding; and

(c) are not being investigated for abuse or neglect by any federal, state, or local government agency.

(13) The emergency substitute's written background statement shall be submitted to the Department for review within 5 working days after the occurrence.

(14) During the term of the emergency, the emergency substitute may be counted in the caregiver-to-child ratio.

(15) The provider shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care, and the amount of time shall not be more than 24 hours per emergency incident.

(16) The provider shall give parents a verbal report of every minor incident, accident, or injury involving their child on the day of the occurrence.

(17) The provider shall give parents a written report of every serious incident, accident, or injury involving their child:

(a) The caregivers involved, the provider, and the person picking up the child shall sign the report on the day of occurrence.

(b) If school-age children sign themselves out of the facility, a copy of the report shall be sent to the parent on the day following the occurrence.

(18) If a child is injured and the injury appears serious but not life-threatening, the child's parent shall be contacted immediately.

(19) In the case of a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb:

(a) emergency personnel shall be called immediately;

(b) after emergency personnel are called, then the parent shall be contacted;

(c) if the parent cannot be reached, staff shall try to contact the child's emergency contact person.

(20) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the Department within the next business day of the incident; or

(b) contact the Department within the next business day and submit a completed accident report form within 5 business days of the incident.

(21) The provider shall keep a six-week record of every serious incident, accident, and injury report on-site for review by the Department.

R430-90-15. Health and Infection Control.

(1) The building, furnishings, equipment, and outdoor area shall be kept clean and sanitary including:

(a) ceilings, walls, and flooring shall be clean and free of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food shall be clean and sanitary;

(c) surfaces used by children shall be free of rotting food or a build-up of food;

(d) the building and grounds shall be free of a build-up of litter, trash, and garbage; and

(e) the facility shall be free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) All toys and materials including those used by infants and toddlers shall be cleaned:

(a) at least weekly or more often if needed,

(b) after being put in a child's mouth and before another child plays with the toy, and

(c) after being contaminated by a body fluid.

(4) Fabric toys and items such as stuffed animals, cloth dolls, pillows, and dress-up clothes shall be machine washable and washed weekly, and as needed.

(5) Highchair trays shall be cleaned and sanitized before each use.

(6) Water play tables or tubs shall be cleaned and sanitized daily, if used by the children.

(7) Bathroom surfaces including toilets, sinks, faucets, and counters shall be cleaned and sanitized each day.

(8) Potty chairs shall be cleaned and sanitized after each use.

(9) Toilet paper shall be accessible to children and kept in a dispenser.

(10) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands.

(11) If cloth towels are used:

(a) they shall not be shared by children, caregivers, or volunteers; and

(b) towels shall be washed daily.

(12) Staff and volunteers shall wash their hands thoroughly with soap and running water at required times including:

(a) before handling or preparing food or bottles,

(b) before and after eating meals and snacks or feeding a child,

(c) after using the toilet or helping a child use the toilet,

(d) after contact with a body fluid,

(e) when coming in from outdoors, and

(f) after cleaning up or taking out garbage.

(13) Caregivers shall teach children how to wash their hands thoroughly and shall oversee handwashing whenever possible.

(14) The provider shall ensure that children wash their hands thoroughly with soap and running water at required times including:

(a) before and after eating meals and snacks,

(b) after using the toilet,

(c) after contact with a body fluid,

(d) before using a water play table or tub, and

(e) when coming in from outdoors.

(15) Personal hygiene items, such as toothbrushes, combs, and hair accessories, shall not be shared and shall be stored so they do not touch each other, or they shall be sanitized between each use.

(16) Pacifiers, bottles, and nondisposable drinking cups shall:

(a) be labeled with each child's name or individually identified; and

(b) not shared, or washed and sanitized before being used by another child.

(17) A child's clothing shall be promptly changed if the child has a toileting accident.

(18) If a child's clothing is wet or soiled from a body

fluid, the provider shall ensure that:

(a) the clothing is washed and dried, or

(b) the clothing is placed in a leakproof container that is labeled with the child's name and returned to the parent.

(19) Staff shall take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, and vomit. Except for diaper changes and toileting accidents, staff shall:

(a) wear waterproof gloves;

(b) clean the surface using a detergent solution;

(c) rinse the surface with clean water;

(d) sanitize the surface;

(e) throw away in a leakproof plastic bag the disposable materials, such as paper towels, that were used to clean up the body fluid;

(f) wash and sanitize any nondisposable materials used to clean up the body fluid, such as cleaning cloths, mops, or reusable rubber gloves, before reusing them; and

(g) wash their hands after cleaning up the body fluid.

(20) A child who becomes ill with an infectious disease while in care shall be made comfortable in a safe, supervised area that is separated from the other children.

(21) If a child becomes ill while in care, the provider shall contact the child's parent as soon as the illness is observed or suspected.

(22) The parents of every child in care shall be informed when any child, employee, or person in the home has an infectious disease or parasite. Parents shall be notified on the day the illness is discovered.

(23) When any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the illness is discovered.

R430-90-16. Food and Nutrition.

(1)The provider shall ensure that each child age 2 years and older is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP menus, the standard Department-approved menus, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) providers who are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name or individually identified,

(b) refrigerated if needed, and

(c) consumed only by that child.

R430-90-17. Medications.

(1) All medications shall be inaccessible to children.

(2) All liquid refrigerated medications shall be stored in a separate leakproof container.

(3) All over-the-counter and prescription medications supplied by parents shall:

(a) be labeled with the child's full name,

(b) be kept in the original or pharmacy container,

(c) have the original label, and

(d) have child-safety caps.

(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.

(5) The medication permission form shall include:

(a) the name of the child,

(b) the name of the medication,

(c) written instructions for administration, and

(d) the parent signature and the date signed.

(6) The instructions for administering the medication shall include:

(a) the dosage,

(b) how the medication will be given,

(c) the times and dates to administer the medication, and

(d) the disease or condition being treated.

(7) If the provider supplies an over-the-counter medication for children's use, the medication shall not be administered to any child without previous parental consent for each instance it is given. The consent shall be:

(a) prior written consent; or

(b) verbal consent if the date and time of the consent is documented, and is signed by the parent upon picking up their child.

(8) The caregiver administering the medication shall:

(a) wash their hands,

(b) check the medication label to confirm the child's name if the parent supplied the medication,

(c) check the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer, and

(d) administer the medication.

(9) Immediately after administering a medication, the caregiver giving the medication shall record the following information:

(a) the date, time, and dosage of the medication given;

(b) any errors in administration or adverse reactions; and

(c) their signature or initials.

(10) The provider shall report a child's adverse reaction to a medication or error in administration to the parent immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.

(11) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication before the time the medication needs to be given.

(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the Department.

R430-90-18. Activities.

(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.

(2) Daily activities shall include outdoor play as weather and air quality allow.

(3) Physical development activities shall include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every 2 hours children spend in the program.

(4) For children 2 years old and older, the provider shall post a daily schedule that includes:

(a) activities that support children's healthy development; and

(b) the times activities occur including at least meal, snack, nap or rest, and outdoor play times.

(5) Toys, materials, and equipment needed to support children's healthy development shall be available to the children.

(6) Except for occasional special events, children's screen time on media such as television, cell phones, tablets, and computers shall:

(a) not be allowed for children 0 to 17 months old;

(b) be limited for children 18 months to 4 years old to 1 hour per day, or 5 hours per week with a maximum screen time of 2 hours per activity; and

(c) be part of a media plan that addresses the needs of children 5 to 12 years old.

(7) If swimming activities are offered or if wading pools are used:

(a) the provider shall obtain parental permission before each child in care uses the pool;

(b) caregivers shall stay at the pool supervising whenever a child is in the pool or has access to the pool, and whenever a wading pool has water in it;

(c) diapered children shall wear swim diapers whenever they are in the pool;

(d) wading pools shall be emptied and sanitized after use by each group of children;

(e) if the pool is over 4 feet deep, there shall be a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(f) lifeguards and pool personnel shall not count toward the caregiver-to-child ratio.

(8) If offsite activities are offered:

(a) the provider shall obtain written parental consent before each activity;

(b) the required caregiver-to-child ratio and supervision shall be maintained during the entire activity;

(c) a first aid kit shall be available;

(d) children's names shall not be used on nametags, t-shirts, or in other visible ways; and

(e) there shall be a way for caregivers and children to wash their hands with soap and water, or if there is no source of running water, caregivers and children shall clean their hands with wet wipes and hand sanitizer.

(9) On every offsite activity, caregivers shall take the written emergency information and releases for each child in the group. The information shall include:

(a) the child's name,

(b) the parent's name and phone number,

(c) the name and phone number of a person to notify in case of an emergency if the parent cannot be contacted,

(d) the names of people authorized by the parents to pick up the child, and

(e) current emergency medical treatment and emergency medical transportation releases.

R430-90-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(3) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(4) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(5) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(6) There shall be no heavy metal swings, such as animal-shaped swings, accessible to children.

(7) Cushioning for stationary play equipment shall cover the entire surface of each required use zone.

(8) If ASTM cushioning is used, the provider shall keep on-site for review by the Department the documentation from the manufacturer that the material meets ASTM Specification F1292.

(9) Stationary play equipment with a designated play surface that measures 6 inches or higher shall not be placed on a hard surface such as concrete, asphalt, dirt, or the bare floor, but may be placed on grass or other cushioning.

(10) Except for trampolines, stationary play equipment that is 18 inches or higher shall:

(a) have a 3-foot use zone that is free of hard objects or surfaces and that extends from the outermost edge of the equipment; and

(b) be stable and securely anchored.

(11) A trampoline shall be considered accessible to children in care unless the trampoline:

(a) is enclosed behind at least a 3-foot high, locked fence or barrier;

(b) has no jumping mat;

(c) is placed upside down, or

(d) is enclosed within at least a 6-foot-high safety net that is locked.

(12) An accessible trampoline without a safety net enclosure shall be placed at least 6 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences.

(13) An accessible trampoline with a safety net enclosure shall be place at least 3 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences if the net:

(a) is properly installed and used as specified by the manufacturer,

(b) is in good repair, and

(c) is at least 6 feet tall.

(14) An accessible trampoline shall be placed over grass, 6-inch-deep cushioning, or ASTM-approved cushioning. Cushioning shall extend at least 6 feet from the outermost edge of the trampoline frame, or at least 3 feet from the outermost edge of the trampoline frame if a net is used as specified in R430-90-19(13).

(15) There shall be no ladders or other objects within the use zone of an accessible trampoline that a child could use to climb on the trampoline.

(16) An accessible trampoline shall have shock-absorbing pads that completely cover its springs, hooks, and frame.

(17) Before a child in care uses a trampoline, the child's parent shall sign a Department-approved permission form that the provider keeps on-site for review by the Department.

(18) When a trampoline is being used by a child in care:

(a) a caregiver shall be at the trampoline supervising,

(b) only one person at a time shall use a trampoline,

(c) no child in care shall be allowed to do somersaults or flips on the trampoline, and

(d) no one shall be allowed to play under the trampoline

when it is in use.

R430-90-20. Transportation.

If transportation services are offered:

(1) For each child being transported, the provider shall have a transportation permission form:

(a) signed by the parent, and

(b) on-site for review by the Department.

(2) Each vehicle used for transporting children shall:

(a) be enclosed with a roof or top,

(b) be equipped with safety restraints,

(c) have a current vehicle registration,

(d) be maintained in a safe and clean condition,

(e) contain a first aid kit, and

(f) contain a body fluid clean up kit.

(3) The safety restraints in each vehicle that transports children shall:

(a) be appropriate for the age and size of each child who is transported, as required by Utah law;

(b) be properly installed; and

(c) be in safe condition and working order.

(4) The driver of each vehicle who is transporting children shall:

(a) be at least 18 years old;

(b) have and carry with them a current, valid driver's license for the type of vehicle being driven;

(c) have with them the written emergency contact information for each child being transported;

(d) ensure that each child being transported is in an individual safety restraint that is used according to Utah law;

(e) ensure that the inside vehicle temperature is between 60-85 degrees Fahrenheit;

(f) never leave a child in the vehicle unattended by an adult;

(g) ensure that children stay seated while the vehicle is moving;

(h) never leave the keys in the ignition when not in the driver's seat; and

(i) ensure that the vehicle is locked during transport.

(5) When the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:

(a) each child being transported has a completed transportation permission form signed by their parent,

(b) a caregiver goes with the children and actively supervises them,

(c) the caregiver-to-child ratio is maintained, and

(d) caregivers take each child's written emergency contact information and releases with them.

R430-90-21. Animals.

(1) The provider shall inform parents of the kinds of animals allowed at the facility.

(2) There shall be no animal on the premises that:

(a) is naturally aggressive;

(b) has a history of dangerous, attacking, or aggressive behavior; or

(c) has a history of biting even one person.

(3) Animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.

(4) There shall be no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(5) Children younger than 5 years of age shall not assist with the cleaning of animals or animal cages, pens, or equipment.

(6) If school-age children help in the cleaning of animals or animal equipment, the children shall wash their hands immediately after cleaning the animal or equipment.

(7) Children and staff shall wash their hands immediately after playing with or touching animals, including reptiles and amphibians.

(8) Dogs, cats, and ferrets that are housed at the facility shall have current rabies vaccinations.

(9) The provider shall keep current animal vaccination records on-site for review by the Department.

R430-90-22. Rest and Sleep.

(1) The provider shall offer children in care a daily opportunity for rest or sleep in an environment with subdued lighting, a low noise level, and freedom from distractions.

(2) Nap or rest times shall not be scheduled for more than 2 hours daily.

(3) Each crib used by children shall:

(a) have a tight-fitting mattress;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without help;

(d) not have strings, cords, ropes, or other entanglement hazards on the crib or within reach of the child; and

(e) meet CPSC standards.

(4) Sleeping equipment may not block exits.

(5) Sleeping equipment and bedding items that are clearly assigned to and used by an individual child shall be cleaned and sanitized as needed and at least weekly.

(6) Sleeping equipment and bedding items that are not clearly assigned to and used by an individual child shall be cleaned and sanitized before each use.

R430-90-23. Diapering.

If the provider accepts children who wear diapers:

(1) Caregivers shall ensure that each child's diaper is:

(a) checked at least once every 2 hours,

(b) promptly changed when wet or soiled, and

(c) checked as soon as a sleeping child awakens.

(2) The diapering area shall not be located in a food preparation or eating area.

(3) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(4) The diapering surface shall be smooth, waterproof, and in good repair.

(5) Caregivers shall clean and sanitize the diapering surface after each diaper change, or use a disposable, waterproof diapering surface that is thrown away after each diaper change.

(6) Caregivers shall wash their hands after each diaper change.

(7) Caregivers shall place wet and soiled disposable diapers:

(a) in a container that has a disposable plastic lining and a tight-fitting lid,

(b) directly in an outdoor garbage container that has a tight-fitting lid, or

(c) in a container that is inaccessible to children.

(8) Indoor containers where wet and soiled diapers are placed shall be cleaned and sanitized each day.

(9) If cloth diapers are used:

(a) they shall not be rinsed at the facility; and

(b) they shall be placed directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or placed in a leakproof diapering service container.

R430-90-24. Infant and Toddler Care.

If the provider cares for infants or toddlers:

(1) Each awake infant and toddler shall receive positive physical and verbal interaction with a caregiver at least once every 20 minutes.

(2) To stimulate their healthy development, the provider shall ensure that infants receive daily interactions with adults; including on the ground interaction and closely supervised time spent in the prone position for infants younger than 6 months of age.

(3) Caregivers shall respond promptly to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, a wet or soiled diaper, fear, teething, or illness.

(4) For their healthy development, safe toys shall be available for infants and toddlers. There shall be enough toys accessible to each infant and toddler in the group to engage in play.

(5) Mobile infants and toddlers shall have freedom of movement in a safe area.

(6) An awake infant or toddler shall not be confined for more than 30 minutes in any piece of equipment, such as a swing, high chair, crib, playpen, or other similar piece of equipment.

(7) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(8) Infants and toddlers shall not have access to objects made of styrofoam.

(9) Each infant and toddler shall be allowed to eat and sleep on their own schedule.

(10) Baby food, formula, or breast milk that is brought from home for an individual child's use shall be:

(a) labeled with the child's name;

(b) kept refrigerated if needed; and

(c) discarded within 24 hours of preparation or opening, except for unprepared powdered formula or dry food.

(11) If an infant is unable to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(12) The caregiver shall swirl and test warm bottles for temperature before feeding to children.

(13) Formula and milk, including breast milk, shall be discarded after feeding or within 2 hours of starting a feeding.

(14) Caregivers shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter, and shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(15) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. An infant shall not be placed to sleep on a mat, cot, pillow, bouncer, swing, car seat, or other similar piece of equipment unless the provider has written permission from the infant's parent.

(16) Infants shall be placed on their backs for sleeping unless there is documentation from a health care provider requiring a different sleep position.

KEY: child care facilities, licensed family child care
December 28, 2017 26-39
Notice of Continuation May 29, 2013

R512. Human Services, Child and Family Services.
R512-308. Out-of-Home Services, Guardianship Services and Placements.
R512-308-1. Purpose and Authority.

(1) The purpose of this rule is to define guardianship services and placements. Guardianship services and placements provide a permanent, safe living arrangement for a child in the court-ordered custody of Child and Family Services or Department of Human Services when it is not appropriate for the child to return home, adoption has been ruled out as a permanency goal, and continuing agency custody is not in the child's best interest.

(2) Guardianship services are authorized by Section 62A-4a-105.

(3) This rule is authorized by Section 62A-4a-102.

R512-308-2. Definitions.

(1) "Child and Family Services" means the Division of Child and Family Services.

(2) "Child and Family Team" has the same meaning as defined in Rule R512-301.

(3) "Guardianship" has the same meaning as defined in Section 78A-6-105.

R512-308-3. General Guardianship Qualifying Factors.

(1) Guardianship services refer to services provided to both relatives and non-relatives who are seeking legal guardianship. All of the following factors must be met in order to qualify for guardianship services.

(a) The child cannot safely return home. This requirement is met if the court determines that reunification with the child's parents is not possible or appropriate and the Child and Family Team and regional screening committee agree that adoption is not an appropriate plan for the child.

(b) The parent and child have a significant bond but the parent is unable to provide ongoing care for the child, such as an emotional, mental, or physical disability, and the child's current caregiver has committed to raising the child to the age of majority and to facilitate visitation with the parent.

(c) The prospective guardian must:

(i) Be able to maintain a stable relationship with the child;

(ii) Have a strong commitment to providing a safe and stable home for the child on a long-term basis;

(iii) Have a means of financial support;

(iv) Have connections to community resources to assist with the care of the child; and

(v) Be able to care for the child without Child and Family Services supervision.

(d) The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager.

(e) There are compelling reasons why the child cannot be adopted, such as when the child's tribe has exclusive jurisdiction or the tribe has chosen to intervene in the adoption proceedings. Under the Indian Child Welfare Act (ICWA), 25 USC Section 1911, a tribe has the right to determine the child's permanency. For this reason, the tribe has the authority to approve guardianship with the current caregiver.

R512-308-4. Non-Relative Qualifying Factors.

(1) In addition to general qualifying factors in R512-308-3, all of the following factors apply to non-relatives who are seeking legal guardianship. In order for guardianship to be awarded:

(a) The prospective guardian is a licensed out-of-home care provider.

(b) The child has lived for at least six months in the home of the prospective guardian. The region director or designee may waive the six-month placement requirement for sibling groups if at least one sibling has been in the home for six months and meets all other eligibility criteria.

(c) A Child and Family Team has reviewed the home study and assessed the placement and found that continuation with the caregiver is in the child's best interest and supports the safety, permanency, and well-being of the child.

(d) Child and Family Services has no concerns with the care the child has received in the home.

(e) Child and Family Services has observed that the child has a stable and positive relationship with the prospective guardian.

R512-308-5. Relative Qualifying Factors.

(1) In addition to general qualifying factors found in R512-308-3, all of the following factors apply for relatives to seek legal guardianship:

(a) The child's prospective guardian is a relative to the child who meets the relationship requirements of the Department of Workforce Services Specified Relative Program, as outlined in R986-200-214, which currently includes:

(i) Grandparents;

(ii) Brothers and sisters;

(iii) Stepbrothers and stepsisters;

(iv) Aunts and uncles;

(v) First cousins;

(vi) First cousins once removed;

(vii) Nephews and nieces;

(viii) People of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(ix) Brothers and sisters by legal adoption;

(x) The spouse of any person listed above;

(xi) The former spouse of any person listed above;

(xii) Individuals who can prove they met one of the above-mentioned relationships via a blood relationship even though the legal relationship has been terminated;

(xiii) Former stepparents;

(xiv) A Native American adult who has a Native American child placed in or living in that adult's home, and both the child and the adult are members of, or eligible for membership in, a federally-recognized tribe; and

(xv) An adult of the same ethnicity, culture, country of origin, religion, language, and/or nationality as the refugee/asylee child in his or her care.

(b) The child's needs may be met without continued Child and Family Services funding.

R512-308-6. Guardianship Subsidy Availability, Scope, Duration.

(1) Guardianship subsidies are available to meet the needs for children in out-of-home care:

(a) For whom guardianship has been determined as the most appropriate primary goal.

(b) Who do not otherwise have adequate resources available for his or her care and maintenance.

(c) Who meet the qualifying factors described in R512-308-3 and also either R512-308-4 or R512-308-5.

(i) For prospective guardians who are also relatives of the child, the caseworker must be provided with a copy of a denial letter or other written proof obtained from the Department of Workforce Services verifying that the prospective guardian does not meet the requirements for the Specified Relative Grant.

(d) In order to be considered for a guardianship subsidy, the prospective guardian must be a licensed out-of-home care provider and demonstrate that they cannot qualify for a Specified Relative Grant through the Department of

Workforce Services as outlined in R512-308-6.

(2) The request for the guardianship subsidy shall be reviewed by the regional guardianship screening committee and regional administration. The regional guardianship subsidy screening committee shall determine if the request is approved or denied.

(3) A prospective guardian shall not receive both the Specified Relative Grant and the guardianship subsidy. If a prospective guardian is found to be receiving both a Specified Relative Grant and guardianship subsidy for the same child, the caseworker will notify the Department of Workforce Services and appropriate actions may be taken by the Department of Workforce Services for repayment.

(4) Guardianship subsidies are available through the month in which the child reaches age 18 years.

(5) Each region may establish a limit to the number of eligible children who may receive guardianship subsidies.

(6) Guardianship subsidies are subject to the availability of state funds designated for this purpose.

R512-308-7. Regional Guardianship Subsidy Screening Committee.

(1) Each region shall establish at least one regional guardianship subsidy screening committee. This committee may be combined with another appropriate committee, such as the adoption subsidy committee or placement committee.

(2) The regional guardianship subsidy screening committee shall be comprised of at least five members. A minimum of three members must be present for making decisions regarding a guardianship subsidy. Decisions shall be made by consensus.

(3) The regional guardianship subsidy screening committee is responsible to:

(a) Verify that a child qualifies for a guardianship subsidy.

(b) Approve the level of need and amount of monthly subsidy for initial requests, changes, and renewals.

(c) Document the committee's decisions.

(d) Inform guardians of available supportive services to prevent disruptions and preserve permanency.

R512-308-8. Determining Guardianship Subsidy Amounts.

(1) The regional guardianship subsidy screening committee will determine the subsidy amount by considering the special needs of the child and the circumstances of the guardian family. The subsidy amount shall not exceed the amounts specified in this section. The caseworker presents to the committee information regarding the special needs of the child, the guardian family's income and expenses, and/or the guardian family's special circumstances.

(2) All of the following factors must be considered when determining the amount of the monthly subsidy to be granted:

(a) All sources of financial support for the child, including Supplemental Security Income, Social Security benefits, and other benefits. The regional guardianship subsidy committee may require verification of financial support.

(i) If a child is receiving benefit income and the income can continue after guardianship is granted, this amount will be deducted from the guardianship subsidy amount.

(ii) The guardianship subsidy should not replace other available income, such as Supplemental Security Income or Social Security Benefits.

(3) A guardianship subsidy will not exceed the amounts indicated below, and may be less based upon the ongoing needs of the child and the needs of the guardian family.

(a) Guardianship I: Guardianship I is for a child who may have mild to moderate medical needs, psychological, emotional, or behavioral problems, and who requires parental supervision and care. The amount of guardianship subsidy for a child whose needs are within Guardianship I may be any amount up to the lowest Foster Care Level 1 (FC1) rate that was in effect at the time the child exited custody. The age of the child is not considered when determining the amount of the guardianship subsidy.

(b) Guardianship II: Guardianship II is for a child who may be physically disabled, developmentally delayed, medically needy or medically fragile, or have a serious emotional disorder. The amount of the guardianship II subsidy may range from the lowest FC1 rate to the lowest Foster Care Level 2 (FC2) rate that was in effect at the time the child exited custody. The age of the child is not considered when determining the amount of the guardianship subsidy.

(4) Children who were placed in Foster Care Level II or higher (FC3, group homes, residential facilities, etc.) at the time of exit are considered for the Guardianship II rate.

(5) Guardianship subsidies may not exceed the Guardianship II rate.

(6) Funds for guardianship subsidies are funded with state general funds. A region has the discretion to limit the number of guardianship subsidies or reduce guardianship subsidy rates based on the availability of funds.

(7) The process for changing the amount of the guardianship subsidy is as follows:

(a) The amount of a guardianship subsidy awarded does not automatically increase when there is an out-of-home care rate change or as the child ages.

(b) A guardian may request a guardianship subsidy review when seeking an increase in the guardianship subsidy amount, not to exceed the maximum amount allowable for the child's level of need. The guardian must complete the form designated by Child and Family Services and provide documentation to justify the request.

(c) The request must be reviewed and approved by the regional guardianship subsidy screening committee. If approved, a new Guardian Subsidy Agreement will be completed.

(d) Child and Family Services may reduce a guardianship subsidy rate due to inadequate state general funds. Child and Family Services must provide written notice of agency action by certified mail at least 30 days in advance if a guardianship subsidy rate is going to be reduced.

R512-308-9. Guardianship Subsidy Agreement.

(1) A Guardianship Subsidy Agreement specifies the terms for financial support for the child's basic needs and may be for a duration of no longer than three years.

(2) A guardianship subsidy worker will complete the Guardianship Subsidy Agreement.

(3) The effective date of the initial agreement is the date of the court order granting guardianship.

(4) A Guardianship Subsidy Agreement must:

(a) Be signed by the guardian and a Child and Family Services designee prior to any payments being made;

(b) Identify the reason a subsidy is needed;

(c) List the amount of the monthly payment;

(d) Identify dates the agreement is in effect;

(e) Identify responsibilities of the guardian;

(f) Identify under what circumstances the agreement may be amended or terminated and the time period for reviews;

(g) Include a provision for a reduction or termination in the amount of the guardianship subsidy in the event a legislative or executive branch action affects Child and Family Services' budget or expenditure authority, making it necessary for Child and Family Services to reduce or

terminate guardianship subsidies, or if a regional office determines that reduction is necessary due to regional budget constraints;

(h) Include a provision for assignment of benefits to the Office of Recovery Services in accordance with the Office of Recovery Services requirements; and

(i) Include a provision for correction of any under or overpayment that was made in error or that was incorrectly paid to the guardian by the Department of Human Services or Child and Family Services.

R512-308-10. Notification Regarding Changes.

(1) The Guardianship Subsidy Agreement shall also include provisions for the guardian to notify Child and Family Services if:

(a) There is no longer a need for a guardianship subsidy.

(b) The guardian is no longer legally responsible for the support of the child.

(c) The guardian is no longer providing any financial support for the child or is providing reduced financial support for the child.

(d) The child no longer resides with the guardian.

(e) The guardian has a change in address.

(f) The child has run away.

(g) The guardian is planning to move out of the state of Utah.

R512-308-11. Reviews and Renewals.

(1) Reviews:

(a) A guardianship subsidy worker will review each Guardianship Subsidy Agreement annually. The family situation, child's needs, and amount of the guardianship subsidy payment may be considered.

(b) Prior to review, the guardian must complete the form designated by Child and Family Services for Guardianship Subsidy Recertification in order to verify that the guardian continues to support the child. If the form is not received after adequate notice, the guardianship subsidy may be delayed or terminated.

(2) Renewals:

(a) In order for guardianship assistance payments to continue, this agreement shall be renewed at intervals of up to three years until the child's 18th birthday.

(b) Written notification of the need to renew the agreement shall be provided to the guardians no less than 60 days prior to the next renewal date. Child and Family Services shall supply the guardian with the appropriate forms for renewal.

(c) Child and Family Services and the guardian may negotiate the terms of a new agreement at any time. In order to be effective, all new agreements shall be in writing, on a form designated by Child and Family Services, and signed by the parties. Oral modifications or agreements shall neither bind the Department of Human Services or Child and Family Services nor the guardian.

R512-308-12. Appeals/Fair Hearings.

(1) When a decision is made to deny, reduce, or terminate a guardianship subsidy, Child and Family Services shall send by certified mail a written Notice of Agency Action. The notice shall also include information about how to request a fair hearing.

R512-308-13. Termination.

(1) A Guardianship Subsidy Agreement will be terminated if any of the following circumstances occur:

(a) The terms of the agreement are concluded.

(b) The guardian requests termination.

(c) The child reaches age 18 years.

(d) The child dies.

(e) The guardian parent dies or, in a two-parent family, if both guardian parents die.

(f) The guardian parents' legal responsibility for the child ceases.

(g) Child and Family Services determines that the child is no longer receiving financial support from the guardian parent.

(h) The child marries.

(i) The child enters the military.

(j) The child is adopted.

(k) The child is placed in out-of-home care.

(2) The Department of Human Services or Child and Family Services determines that funding restrictions prevent continuation of subsidies for all guardians.

(3) A Guardianship Subsidy Agreement will be suspended and reviewed for possible termination if any of the following circumstances occur:

(a) The child is incarcerated for more than 30 days.

(b) The child is out of the home for more than a 30-day period or is no longer living in the home.

(c) The guardian fails to complete the renewed Guardianship Subsidy Agreement within five working days of the renewal date.

(d) There is a supported finding of child abuse or neglect against the guardian.

(4) The decision to terminate or suspend a guardianship subsidy payment shall be made by the regional guardianship subsidy screening committee.

KEY: out-of-home care, guardianship

December 8, 2017	**62A-4a-102**
Notice of Continuation July 22, 2015	**62A-4a-105**
	78A-6-105

R523. Human Services, Substance Abuse and Mental Health.
R523-16. Certification of Essential Treatment Examiners and Case Managers.
R523-16-1. Authority.

(1) This rule is authorized by Utah Code 62A-15-105(6) and directs The Division of Substance Abuse and Mental Health (DSAMH) to make rules approving the form and content of substance abuse treatment.

R523-16-2. Purpose.

(1) The purpose of this rule is to:

(a) immediately and effectively achieve and implement the Legislative intent achieved in the Essential Treatment and Intervention Act as set forth in Utah Code 62A-15-1201 et seq.; and

(b) provide the supporting process for essential treatment examiners to qualify and provide certification from DSAMH to the Court as required in the Act.

R523-16-3. Essential Treatment Examiners Certification.

(1) An "Essential Treatment Examiner" is:

(a) a licensed physician, preferably a psychiatrist; or

(b) a licensed mental health professional designated by DSAMH as specially qualified by experience and training who:

(i) has at least five years experience in the treatment of substance use disorders, and

(ii) holds a current Designated Examiner certification; or

(c) between June 1, 2017 and June 30, 2019, is a licensed mental health professional designated by DSAMH as specially qualified by experience and training who:

(i) has at least five years experience in the treatment of substance use disorders, and

(ii) has made application with DSAMH and is approved to be an essential treatment examiner.

(2) DSAMH shall certify that an essential treatment examiner is qualified by training and experience in the diagnosis of substance use disorders. All licensed physicians are presumed to have the qualification necessary to be an Essential Treatment Examiner; therefore, this category of professional need not make an application to DSAMH. Certification for non-licensed physicians shall require at least five years experience in the treatment of substance use disorders, and successful completion of any training provided by DSAMH for the purpose of certifying essential treatment examiners.

(a) application for certification shall be achieved by the applicant making a written request through a DSAMH approved form, to DSAMH for consideration. Upon receipt of a written application, the Director or designee shall initiate a review and examination of the applicant's qualifications.

(b) the applicant must meet the following minimum standards in order to be certified:

(i) be a licensed mental health professional, per Utah Code 58-60-405, that holds a current Designated Examiner certification; or

(ii) be a licensed mental health professional, per Utah Code 58-60-405, that has expressed an interest in becoming an essential treatment examiner by making application with DSAMH;

(iii) be a resident of the State of Utah;

(iv) demonstrate a complete and thorough understanding of substance use disorders, as determined by training and experience;

(v) exhibit a fundamental and working knowledge of the purpose and requirements of the Essential Treatment Act and role of the certified examiner as approved by the court by demonstrating a thorough understanding of the conditions, which must be met to warrant a district court to order an individual to undergo essential treatment for a substance use disorder, as determined by training, experience and written examination;

(vii) be able to demonstrate a general knowledge of the court process including commitment hearings, and be able to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, as determined by experience, training and written examination;

(viii) shall attend any required training for certification as an essential treatment examiner as provided by DSAMH and pass the exam at the completion of the training with a minimum of 70% correct;

(d) DSAMH Director or designee shall determine if experience and qualifications are satisfactory to meet the required standards.

(e) DSAMH Director shall determine if there are any training requirements that may be waived due to prior experience and training and which may qualify as an exception of any of the above requirements; and

(f) upon satisfactory completion of the requirements outlined in R523-16-3(2), DSAMH Director or designee shall certify the qualifications of the applicant, make record of such certification, and issue a certificate to the applicant reflecting their status as an approved essential treatment examiner and authorizing such privileges and responsibilities as prescribed by law.

R523-16-4. Essential Treatment Examiners Fees and Compensation for Services.

(1) All fees, compensations and payments for services rendered during an essential treatment examination shall be negotiated between the petitioner and the essential treatment examiner.

KEY: essential treatment examiners, involuntary commitment, substance use
December 11, 2017 **62A-15-105**
62A-15-1202(1)

R527. Human Services, Recovery Services.
R527-39. Applicant/Recipient Cooperation.
R527-39-1. 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 define the terminology related to client cooperation as required for eligibility for IV-A or Medicaid assistance, to identify the cooperation requirements, and to describe the review process available to a client if the client disagrees with the office's assessment that the client is or is not cooperating as required.

R527-39-2. Definitions.

1. IV-A recipient means any individual who has been determined eligible for financial assistance under title IV-A of the Social Security Act.

2. Non-IV-A Medicaid recipient means any individual who has been determined eligible for or is receiving Medicaid under title XIX of the Social Security Act but has not been determined eligible for, or is not receiving, financial assistance under title IV-A of the Social Security Act.

3. IV-A agency means the State agency that has the responsibility for administration of, or supervising the administration of, the State plan under title IV-A of the Social Security Act.

4. Medicaid agency means the State agency that has the responsibility for administration of, or supervising the administration of, the State plan under title XIX of the Social Security Act.

R527-39-3. Cooperation Requirements.

1. An applicant/recipient of IV-A or Non-IV-A Medicaid services, with some Medicaid program exceptions, must cooperate with the Office of Recovery Services/Child Support Services (ORS/CSS) in:

a. identifying and locating the parent of a child for whom aid is claimed;

b. establishing the paternity of a child born out of wedlock for whom aid is claimed;

c. establishing an order for child support;

d. obtaining support payments for the recipient and for a child for whom aid is claimed unless a Good Cause determination has been made by the IV-A or Medicaid agency, or the Non-IV-A Medicaid applicant/recipient has declined child support services;

e. obtaining any other payments or property due the recipient or the child; and

f. obtaining and enforcing the provisions of an order for medical support.

2. The applicant/recipient must cooperate with ORS/CSS with specific actions that are necessary for the achievement of the objectives listed above, as follows:

a. appearing at the ORS/CSS office to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the recipient;

b. participating at judicial or other hearings or proceedings;

c. providing information;

d. turning over to ORS/CSS any support payments received from the obligor after the Assignment of Collection of Support Payments has been made.

e. complying with a judicial or administrative order for genetic testing.

R527-39-4. Request for Review.

1. When ORS/CSS notifies a IV-A or Non-IV-A Medicaid applicant/recipient that she/he is not cooperating in a case, the applicant/recipient may contest the determination by requesting that ORS/CSS conduct an office administrative review. Such a review shall not be subject to the provisions of the Utah Administrative Procedures Act (UAPA), or be considered an adjudicative proceeding under Section 63G-4-203 and Rule R527-200. The applicant/recipient may choose instead to request an adjudicative proceeding under UAPA, or petition the district court to review the noncooperation determination and issue a judicial order based on its findings. If an administrative review is requested, the senior agent designated to conduct the review shall examine the case record, talk to the agent assigned to the case, consult with the team manager, and consider any new information the applicant/recipient provides to determine whether she/he has or has not met the cooperation requirements listed in Section 62A-11-307.2 or is not able to meet the requirements and is cooperating in good faith.

2. If a IV-A or Non-IV-A Medicaid applicant/recipient disagrees with the results of an administrative review conducted by an ORS/CSS senior agent, she/he may request that an ORS/CSS Presiding Officer conduct an adjudicative proceeding, or the applicant/recipient may petition the district court to review the initial noncooperation determination and the results of the administrative review, and issue a judicial order based on its findings.

3. If a IV-A or Non-IV-A Medicaid applicant/recipient disagrees with the Decision and Order issued by an ORS/CSS Presiding Officer after the close of an adjudicative proceeding, she/he may request reconsideration within 20 days after the date the Decision and Order is issued as provided in Sections 63G-4-302 and R527-200-14, or petition the district court to review the Decision and Order and issue a judicial order based on its findings.

KEY: child support

July 13, 2009	**62A-1-111**
Notice of Continuation December 15, 2017	**62A-11-104**
	62A-11-107
	62A-11-307.2
	63G-4-203
	63G-4-302

R527. Human Services, Recovery Services.
R527-56. In-Kind Support.
R527-56-1. Authority and Purpose.

1. Section 62A-11-107 authorizes the Office of Recovery Services is to adopt, amend and enforce rules.

2. The purpose of this rule is to specify the responsibility and procedures for the Office of Recovery Services, Child Support Services teams (ORS/CSS) to grant or deny credit for support paid in-kind when a court or administrative authority has previously ordered cash support payments. This rule also specifies the right of ORS/CSS to recover the amount of in-kind support from the obligee when they continue to accept payments after signing an assignment or similar document.

R527-56-2. Requirements and Procedures.

1. "In-kind" support is support provided by the obligor to the obligee in lieu of payment of a cash support amount.

2. In cases where the obligee is receiving financial public assistance, ORS/CSS shall give credit to obligors for in-kind support payments when cash support is court-ordered and there is an in-kind support agreement between the obligee and obligor meeting the following criteria:

a. Both the obligor and the obligee shall have agreed to the in-kind support.

b. The agreement shall be in writing.

c. The agreement pre-dates the obligee receiving financial public assistance.

d. The agreement shall have been filed with the court.

e. The value of the in-kind support is undisputed.

f. The in-kind support is easily valued.

g. The value of the in-kind support provided in a month equals or exceeds the monthly amount of cash support ordered by the court.

h. ORS/CSS shall have received written notice of the agreement and registered no objection to the agreement when the obligee applied for public assistance.

3. If the criteria listed above are met, ORS/CSS shall give the obligor credit for the monthly court-ordered amount for each month that the agreement was in effect and the in-kind support was provided.

4. ORS/CSS may take whatever action is necessary to require prospective payment of the court-ordered cash support during the time period that the obligee receives financial public assistance.

5. If the obligee signed an assignment or other document from the Department of Workforce Services or ORS/CSS which specified that upon receipt of financial public assistance by the obligee ORS/CSS requires prospective payment of cash support as ordered by the court, and the obligor and obligee continue to act in accordance with the in-kind support agreement, the obligee is considered to be retaining support in violation of the assignment of support rights, and the office may recover the amount of in-kind support from the obligee.

6. If the obligee did not sign an assignment or other document as described in (5.), but otherwise received written notice from ORS/CSS that upon receipt of financial public assistance by the obligee ORS/CSS requires prospective payment of cash support as ordered by the court, and the obligor and obligee continue to act in accordance with the in-kind support agreement, the obligee is considered to be retaining support in violation of the assignment of support rights, and ORS/CSS may recover the amount of in-kind support from the obligee.

7. Once an obligor receives written notice that an assignment of support rights is in effect and that ORS/CSS requires payment of cash support as ordered by the court, the obligor may be held responsible to pay directly to ORS/CSS any prospective support payments which are due under a support order, in the manner provided in the support order.

KEY: child support
June 9, 2008 62A-11-104(1)
Notice of Continuation December 15, 2017 62A-11-307.2

R527. Human Services, Recovery Services.
R527-260. Driver License Suspension for Failure to Pay Support.
R527-260-1. Authority.

(1) Section 62A-11-107 authorizes the Office of Recovery Services/Child Support Services (ORS/CSS) to adopt, amend and enforce rules.

(2) Sections 53-3-102, 53-3-221, 53-3-221.5, 62A-11-601, 62A-11-602, 62A-11-603, and 62A-11-604 provide for suspension of an individual's driver license for failure to pay child support.

R527-260-2. Purpose.

The purpose of this rule is to provide procedures and criteria for ORS/CSS to suspend an obligor parent's driver license for failure to pay child support.

R527-260-3. Driver License Suspension Criteria.

ORS/CSS may begin procedures for driver license suspension on an obligor if all other administrative enforcement actions have been exhausted and the obligor:

(1) has a valid Utah driver license;

(2) is delinquent in child support payment pursuant to Section 62A-11-602(2);

(3) is working, but ORS/CSS is unable to send a Notice to Withhold Income for Child Support; and,

(4) has the ability to pay child support.

R527-260-4. Notice of Agency Action.

(1) ORS/CSS will notify the obligor of the possibility of suspending his/her driver license for failure to pay child support by sending a Notice of Agency Action (NAA) pursuant to Sections 62A-11-304.2 and 63G-4-102 et seq. The NAA will be personally served upon the obligor.

(2) Once the obligor has been personally served, s/he has thirty days to respond to the NAA and request an informal adjudicative hearing with ORS/CSS. If the obligor fails to respond to the NAA, the obligor's case(s) will be sent to the ORS/CSS Supervisory Review Panel for approval to proceed with the driver license suspension.

R527-260-5. Repayment Agreement to Stop Driver License Suspension.

(1) Upon receipt of the NAA, the obligor may enter into a repayment agreement with ORS/CSS to temporarily stop the suspension process. The repayment agreement must include both current support, if appropriate, and an arrears payment for six consecutive months. ORS/CSS will determine the obligor's monthly arrears payment by reviewing his/her actual income and necessary debts to arrive at a reasonable monthly amount.

(2) If the obligor makes the full required payment each month for six consecutive months, ORS/CSS will dismiss the NAA.

(3) If the obligor fails to comply with the terms of the repayment agreement at any time during the six consecutive months, his/her case will immediately be sent to the ORS/CSS Supervisory Review Panel to determine the next appropriate action on the case; for example, to proceed with suspension of the obligor's driver license.

R527-260-6. ORS/CSS Supervisory Review Panel.

(1) The ORS/CSS Supervisory Review Panel consists of the ORS Director, the CSS Director and other members as designated by the ORS and CSS Directors.

(2) The panel is responsible to review the case and determine if it is appropriate to proceed with suspension of the obligor's driver license.

(3) If the ORS/CSS Supervisory Review Panel determines it is appropriate to proceed with the driver license suspension, the ORS or CSS Director will sign the Order to Suspend, which will be sent to the Driver License Division for enforcement.

(4) If the ORS/CSS Supervisory Review Panel determines it is not appropriate to suspend the obligor's license, the case will be sent back to the team to take the next appropriate action and/or dismiss the NAA.

R527-260-7. Repayment Agreement to Rescind Driver License Suspension.

(1) Once the Driver License Division has been notified to suspend the obligor's driver license, the obligor may contact ORS/CSS to make arrangements to rescind the Order to Suspend and reinstate his/her driver license. The obligor may enter into a repayment agreement, which includes both current support, if appropriate, and an arrears payment to be paid for six consecutive months. ORS/CSS will determine the obligor's monthly arrears payment by reviewing his/her actual income and necessary debts to arrive at a reasonable monthly amount.

(2) The obligor's license will remain suspended until s/he has successfully complied with the terms of the repayment agreement. Once the terms of the repayment agreement have been met, ORS/CSS will rescind the Order to Suspend and notify the Driver License Division.

KEY: child support, driver license
July 1, 2008 **53-3-102**
Notice of Continuation December 15, 2017 **53-3-221**
53-3-221.5
62A-11-107
62A-11-304.2
62A-11-601
62A-11-602
62A-11-603
62A-11-604

R527. Human Services, Recovery Services.
R527-301. Non-IV-D Income Withholding.
R527-301-1. Authority and Purpose.

1. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide information about the requirements of the Office of Recovery Services in regards to Non-IV-D Income Withholding. The rule states who can request income withholding and the proper procedures to pursue income withholding.

R527-301-2. Responsibility of the Office of Recovery Services.

The responsibilities of the Office of Recovery Services in regard to Non-IV-D Income Withholding are limited to receiving the income withholding, processing the payment, issuing a payment to the custodial parent, and maintaining a payment record. Modifications to the support order or withholding amounts are the responsibility of the parents.

R527-301-3. Child Support Order Does Not Require Immediate Income Withholding.

Either party to the support order may pursue income withholding by filing for an Order/Notice to Withhold in the court, by applying for IV-D child support enforcement services, or by receiving IV-A assistance.

R527-301-4. Collection of Child Care Expenses Through Income Withholding.

Child care expenses shall not be collected through Non-IV-D Income Withholding.

R527-301-5. Enforcement of Notice to Withhold When Payor Fails to Comply.

If a payor fails to comply with the Notice to Withhold, either the custodial parent or the non-custodial parent may proceed with judicial action against the employer to enforce the Notice to Withhold and to obtain a judgment in accordance with Subsections 62A-11-506 (1)(f), (j) and (k).

R527-301-6. Modification of Income Withholding Amount.

If the Notice to Withhold needs to be modified for any reason, the parent must apply for IV-D services or file for an Order/Notice to Withhold in the court that issued the support order.

R527-301-7. Custodial Parent's Failure to Keep Office Notified of Mailing Address.

The office shall hold income withholding payments for 60 calendar days after the office determines that the custodial parent's address is unknown. During this 60-day period, the office shall make one attempt to locate the custodial parent, using resources available to the office. If the custodial parent's address is still unknown at the end of 60 calendar days, the office shall refund the support to the non-custodial parent. The support shall not accrue interest during the time it is being held to locate the custodial parent.

R527-301-8. Termination of Income Withholding.

At any time after the date income withholding begins, a party to the child support order may request a judicial hearing to determine whether income withholding should be terminated. If the court orders that income withholding should be terminated, the obligee will provide written notice of termination to each payor of income.

KEY: child support

October 1, 2009 62A-11-107
Notice of Continuation December 15, 2017 62A-11-502
62A-11-504
62A-11-506
62A-11-508

R527. Human Services, Recovery Services.
R527-302. Income Withholding Fees.
R527-302-1. 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. This rule establishes procedures for a payor of income to withhold a one-time fee to offset administrative costs incurred when processing a withholding order pursuant to Rule 64D, Utah Rules of Civil Procedure, and Section 78A-2-216(1)(b).

R527-302-2. Income Withholding Fees.

1. When the Office of Recovery Services/Child Support Services (ORS/CSS) initiates income withholding against a payor of income for payment of an obligor's child support, the payor of income may deduct a one-time $25.00 fee to offset the administrative costs it incurs to process the withholding pursuant to Rule 64D, Utah Rules of Civil Procedure, and Subsection 78A-2-216(1)(b).

2. A payor of income may choose to deduct the entire $25.00 in the first month of withholding, or, pursuant to Subsection 62A-11-406(4), a payor may choose to deduct the $25.00 in monthly increments (for example, $5.00 per month for 5 months) until the full amount has been deducted, provided the total amount withheld does not exceed the maximum amount permitted under Subsection 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b).

KEY: child support, income withholding fees
June 25, 2008 62A-11-406
Notice of Continuation December 15, 2017 78A-2-216
Rule 64D, Utah Rules of Civil Procedure

R527. Human Services, Recovery Services.
R527-305. High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases.
R527-305-1. Authority.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107. Section 62A-11-111 provides for collection with liens and the disposition of property acquired by the department.

2. This rule establishes procedures for High-Volume, Automated Administrative Enforcement in Interstate child support cases pursuant to Section 62A-11-305, and Subsection 466(a)(14) of the Social Security Act.

R527-305-2. Purpose.

The purpose of this rule is to provide procedures for the Office of Recovery Services/Child Support Services (ORS/CSS), when a request is received from a IV-D child support agency of another state for high-volume, automated administrative enforcement of support orders.

R527-305-3. Definitions.

1. "Requesting State" means the state sending an administrative interstate enforcement request to the assisting state.

2. "Assisting State" means the state matching the requesting state's delinquent obligors against databases and, if appropriate, seizing assets on behalf of the requesting state.

3. "High-Volume, Automated Administrative Enforcement in Interstate Cases" means the use of automated data processing to search the assisting state's databases to determine whether information is available regarding parents who owe child support in the requesting state, and the seizure of identified assets, if appropriate, using the same techniques as used in intrastate cases.

4. "IV-D agency" means an agency authorized by Title IV, Section D of the Social Security Act to administer child support services and collections.

R527-305-4. Procedures for High-Volume, Automated Administrative Enforcement of Interstate Referrals.

The procedures below apply whenever ORS/CSS receives a request for high-volume, automated administrative enforcement of interstate cases from another state's IV-D agency.

1. Another state may transmit a request for automated administrative enforcement of support orders to ORS/CSS by electronic or other means. The requesting state may transmit a single high-volume referral that includes multiple requests.

2. A request for automated administrative interstate enforcement shall not be considered a transfer of the cases referred to the ORS/CSS caseload.

3. ORS/CSS will conduct a match of the referral data against Utah state databases to which it has access to determine if information regarding the obligor is available. ORS/CSS will notify the requesting state of the results of the search.

4. ORS/CSS will give an automated administrative interstate enforcement request the same priority it gives to a regular interstate case referred by another state for collection services or establishment, modification, or registration of an order.

KEY: child support, interstate
April 21, 2008 62A-11-305
Notice of Continuation December 15, 2017

R527. Human Services, Recovery Services.
R527-430. Administrative Notice of Lien-Levy Procedures.
R527-430-1. Authority.

This rule establishes procedures for Notice of Lien and Levy pursuant to Subsections 62A-11-103(4), (14); 62A-11-104(9); 62A-11-304.1(1)(h)(i)(A) and (B), (1)(h)(ii), (1)(h)(iii), (1)(h)(iv), (2), (5)(b); 62A-11-304.5 (1)(b); and Section 62A-11-313.

R527-430-2. Purpose.

The purpose of this rule is to provide procedures for the Office of Recovery Services/Child Support Services (ORS/CSS) to determine the amount that a financial institution or payor should release to an unobligated spouse who jointly owns a financial account, as defined in Subsection 62A-11-103(4), or who is a joint-recipient of a non-means tested lump sum payment, judgment, settlement, or lottery, when ORS/CSS has subjected the account, non-means tested lump sum payment, judgment, settlement, or lottery to a Notice of Lien-Levy, and the unobligated spouse has contested the action.

R527-430-3. Definitions.

1. Terms used in this rule are defined in Sections 62A-11-103, 62A-11-303 and 62A-11-401.

2. In addition,"unobligated spouse" means a spouse and joint-owner of a financial account, joint-recipient of a non-means tested lump sum payment, judgment, settlement, or lottery who is not obligated under the child support order that is the basis for the action.

R527-430-4. Procedures on Joint Financial Accounts, Non-means Tested Lump Sum Payments, Judgments, Settlements, and Lotteries.

The procedures below will apply when an unobligated spouse contests a Notice of Lien-Levy or a Notice of Lien-Levy, Lump Sum Payment upon a joint financial account or payor of a non-means tested payment, judgment, settlement, or lottery.

1. The unobligated spouse must make a written request to ORS/CSS to review the action within 15 days of the date the concurrent notice of lien-levy was sent to the obligor and the unobligated spouse, pursuant to Subsection 62A-11-304.1(5)(a).

2. In cases that involve amounts from financial institutions, the unobligated spouse must provide ORS/CSS with documentation of recent income and/or documentation of the sources of deposits made to the financial account. Examples of income documentation include: copies of tax returns for the prior year with W-2's attached; or, copies of two or more recent pay records. Examples of documentation of deposits to a financial account include: receipts or statements which show the sources of deposits made to the financial institution for the current month and one or more prior months. In cases that involve amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, the unobligated spouse must provide ORS/CSS with documentation of the settlement percentage that each recipient should receive. Examples of payment documentation include: written verification from the insurance company or other payor, a copy of the payment or settlement agreement, and/or a copy of a signed judgment.

3. ORS/CSS will determine the amount that the financial institution should release to the unobligated spouse based upon the proportionate share of the income earned by the unobligated spouse, or the proportionate share of deposits made to the financial account by the unobligated spouse, or a combination of the two methods. In cases that involve amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, ORS/CSS will determine the amount that the payor should release to the unobligated spouse based upon the validity of the documentation provided to ORS/CSS.

4. If it is determined that a portion of the property should be released to the unobligated spouse, ORS/CSS will notify the financial institution or payor pursuant to Subsection 62A-11-304.1(5)(b).

5. Upon receipt of a notice of release from ORS/CSS, the financial institution or payor shall release the property that is specified in the notice of release, but continue to secure the remaining property from unauthorized transfer or disposition until 21 days after the date the original Notice of Lien-Levy was sent, at which time the financial institution or payor shall surrender the remaining property to ORS/CSS pursuant to Subsection 62A-11-304.1(5)(b).

KEY: child support
March 18, 1999 62A-11-304.1
Notice of Continuation December 15, 2017

R527. Human Services, Recovery Services.
R527-475. State Tax Refund Intercept.
R527-475-1. 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. This rule establishes procedures for the Office of Recovery Services/Child Support Services (ORS/CSS) to intercept a state tax refund to recover delinquent child support pursuant to Section 59-10-529(1).

R527-475-2. State Tax Refund Intercept.

1. For a state tax refund to be intercepted, there must be an administrative or judicial judgment with a balance owing. An installment of child support is considered a judgment for purposes of Section 59-10-529 on and after the date it becomes due as provided in Section 78B-12-112.

2. State tax refunds intercepted will first be applied to current support, second to Non-IV-A arrearages, and third to satisfy obligations owed to the state and collected by ORS/CSS.

3. ORS/CSS shall mail prior written notice to the obligor who owes past-due support and the unobligated spouse that the state tax refund may be intercepted. The notice shall advise the unobligated spouse of his/her right to receive a portion of the tax refund if the unobligated spouse has earnings and files jointly with the obligor. If the unobligated spouse does not want his/her share of the tax refund to be applied to the obligated spouse's child support debt, the unobligated spouse shall make a written request and submit a copy of the tax return and W-2's to ORS/CSS at any time after prior notice, but in no case later than 25 days after the date ORS/CSS intercepts the tax refund. If W-2s are unavailable, ORS/CSS may use amounts of incomes as reported on the joint tax return. The unobligated spouse's portion of the joint tax refund will be prorated according to the percentage of income reported on the W-2 forms or the joint tax return for the tax year. If the unobligated spouse does not make a written request to ORS/CSS to obtain his share of the tax refund within the specified time limit, ORS/CSS shall not be required to pay any portion of the tax refund to the unobligated spouse.

KEY: child support, taxes
June 25, 2008 59-10-529
Notice of Continuation December 15, 2017 78B-12-112

R590. Insurance, Administration.
R590-124. Loss Information Rule.
R590-124-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the general authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Subsection 31A-23a-402(8) authorizing the commissioner to define unfair methods of competition.

R590-124-2. Purpose and Scope.

(1) Accurate loss information is necessary in underwriting and rating insurance policies. The purpose of this rule is to provide for the prompt dissemination of loss information between insurers and their insureds.

(2) This rule applies to every authorized property and liability insurer licensed to do business in Utah writing those lines of insurance commonly identified as commercial property and commercial liability, including workers' compensation but excluding disability, and including every recognized Surplus Line Company and the Workers' Compensation Fund of Utah.

R590-124-3. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition thereto, the following definitions:

(1) "Named Insured" shall mean the person(s) or organization(s) listed in the policy declarations as the policyholder, or the legal representative thereof.

(2) "First Named Insured" shall mean the first entity named as a Named Insured in the declarations of the policy;

(3) "Loss" shall mean the dollar amount paid to an insured or claimant by an insurer on a claim made against an insurance contract;

(4) "Notice of Occurrence" shall mean notice to an insurer of an occurrence, which might result in a claim against an insurance contract.

R590-124-4. Rule.

(1) All insurers issuing policies to which this rule applies shall provide loss information to the first named insured within 30 days from the receipt of a written request from the named insured. Loss information shall be provided for the three most recent policy years in which coverage was provided, or complete loss information if the policy has been in effect less than three years. If an insurer initiates the cancellation or the nonrenewal of a policy it shall advise the first named insured of this right to request the loss information.

(2) The following is the loss information that must be provided:

(a) Information on closed claims where payment was allowed, including date of occurrence, type of loss, and amount of payments;

(b) Information on all open claims, including date of occurrence, type of loss, and amount of payments, if any;

(c) Information on notices of occurrence, including date of occurrence.

(3) The required loss information need only be provided one time in any twelve month period and shall be provided at no charge to the insured.

(4) Loss information requests received more than three years after the termination of coverage need not be honored.

(5) The loss information required by this rule shall be provided in a format that is clear and understandable to the insured.

R590-124-5. Penalties.

If a company fails to provide the information as required by this rule, such failure shall constitute an unfair trade practice as defined in Section 31A-26-303 and Rule R590-190 and shall be subject to the forfeiture and penalty provisions of Section 31A-2-308.

R590-124-6. 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 provisions shall not be affected thereby.

R590-124-7. Effective Date.

This rule shall be effective July 14, 1988.

KEY: insurance companies
1988 31A-23a-402
Notice of Continuation December 8, 2017

R590. Insurance, Administration.
R590-151. Records Access Rule.
R590-151-1. Authority.

This rule is adopted pursuant to the provisions of Chapter 2, Title 63G, the Government Records Access and Management Act (GRAMA), specifically Subsections 63G-2-204(2), and 63A-12-104(2).

R590-151-2. Purposes.

The purposes of this rule are to define how record requests are to be made to the Insurance Department and to define how an individual may contest the accuracy and completeness of records concerning that individual which are maintained by the department.

R590-151-3. Rule.

(1) Making a Request for Access to Records.

(a) All record requests made under the provisions of GRAMA shall be made in writing by completing the online Request Form available through Utah's Open Record Portal at https://openrecords.utah.gov.

(b) The department's response may be delayed if a submitted request is incomplete.

(2) The department may, at its discretion, waive the requirement for a written request if the records requested are public and readily accessible, or for other good cause shown.

(3) Appeals From Initial Decisions. All appeals from an initial decision by the department, which denies access to a record, shall be addressed to the insurance commissioner and shall conform to the requirements of Section 63G-2-401. The authority to order disclosure or nondisclosure is delegated to the head of the division which maintains the record or to any other person the commissioner may designate from time to time.

(4) Contesting Accuracy or Completeness of a Record.

(a) Any request pursuant to Subsection 63G-2-603(2) shall be directed to the records officer.

(b) Consideration of the request shall be conducted as an informal adjudicative proceeding unless converted to a formal adjudicative proceeding by the presiding officer.

(c) A request to amend findings of fact in any administrative proceeding where the time for appeal has expired shall be denied. These types of records shall be maintained in their original form to protect the public interest and the integrity of the Administrative Records. Section 63G-2-603, may not apply.

R590-151-4. Severability.

If any provision or clause of this rule or the application of it to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provision of this rule are declared to be severable.

KEY: insurance records access
December 8, 2017 63G-2-204
Notice of Continuation July 12, 2017 63A-12-104

R590. Insurance, Administration.
R590-155. Utah Life and Health Insurance Guaranty Association Summary Document.
R590-155-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3)(a), in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title; and

(2) Subsection 31A-28-119, to provide guidelines for the Utah Life and Health Insurance Guaranty Association summary and disclaimer document.

R590-155-2. Purpose and Scope.

1. The purpose of this rule is to specify the form and content of the summary and disclaimer document for insurers to disclose to policy or contract holders the extent that contractual guarantees are not covered or have limited coverage by the Utah Life and Health Insurance Guaranty Association as required by Section 31A-28-119.

2. The rule shall apply to all insurance transactions in this state involving life and health insurance policies and annuity contracts as specified in Subsection 31A-28-103(2).

R590-155-3. Rule.

1. An insurer authorized to do business in this state, which is subject to the Utah Life and Health Insurance Guaranty Association Act, shall disclose to its policy or contract holders that its contractual guarantees may not be covered by the Utah Life and Health Insurance Guaranty Association.

2. For the purpose of this rule, the term "policy or contract holders" shall also mean insureds or certificate holders of group policies.

3. Disclosure shall be made in writing using the text in the attachment to this Rule.

4. Disclosure shall be given before or at the time of delivery of the policy, contract, or certificate. The summary and disclaimer document shall also be available upon request by a policy or contract holder.

5. Each insurer shall submit a copy of the summary and disclaimer document to the commissioner for approval.

R590-155-4. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the effective date of this rule.

R590-155-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-155-6. Severability.

If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provisions to other persons or circumstances shall not be affected.

KEY: insurance
June 21, 2010 31A-2-201
Notice of Continuation December 8, 2017 31A-28-119

R590. Insurance, Administration.
R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee.
R590-157-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections:

(1) 31A-3-303(2) which requires the commissioner by rule to prescribe accounting and reporting forms and procedures to be used in calculating and paying the surplus lines premium tax; and

(2) 31A-15-103(11)(d) which requires the commissioner by rule to specify the stamping fee amount and how it is to be collected.

R590-157-2. Purpose and Scope.

A. The purposes of this rule are to prescribe:

(1) the amount of the stamping fee and;

(2) the accounting and reporting forms and procedures to be used in calculating surplus lines premium taxes and stamping fees; and.

(3) the authorized entities to examine the transaction and collect and receive the tax and fee.

B. This rule applies to:

(1) insurers, surplus lines producers, and policyholders who are jointly and severally liable for the payment of the premium taxes and stamping fee;

(2) the advisory organization authorized to examine surplus transactions; and

(3) the commissioner's authorized agent to collect the stamping fee and premium tax and remit the premium tax to the commissioner.

R590-157-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301, and the following:

A. "Courtesy filing" means a surplus lines policy filing done by a resident surplus lines producer on behalf of a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

B. "Courtesy filing fee" means a fee charged by the resident surplus lines producer for doing a courtesy filing for a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

C. "Stamping fee" means a percentage of policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11).

D. "Surplus Line Association" or "Association" means the Surplus Lines Association of Utah.

E. "Surplus lines producer" means a person licensed under Subsection 31A-23a-106(1)(i) to place insurance with eligible unauthorized insurers in accordance with Section 31A-15-103.

F. "Surplus lines insurer" means an unauthorized foreign or alien insurer subject to the limitations and requirements of Section 31A-15-103, doing business in this state through surplus lines producers, and included on the commissioner's "recognized" list.

G. "Surplus lines premium" means the monetary consideration for an insurance policy procured from an unauthorized insurer, and includes policy fees, membership fees, required contributions, or monetary consideration, however designated.

H. "Surplus lines premium tax" means, as prescribed by Section 31A-3-301, a tax of 4-1/4% of gross surplus lines premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.

I. "Surplus lines transaction" means the placement with a surplus lines insurer of an insurance policy or certificate of insurance. It also means any cancellation, endorsement, audit, or other adjustment to the insurance policy that affects the premium.

R590-157-4. Stamping Fee Amounts.

A. The surplus lines stamping fee is .18 of 1% of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(d).

B. Late surplus lines stamping fee payments may be subject to late fees of 25% of the stamping fee due plus 1 1/2% per month from the time of default until full payment of the fee.

C. A courtesy filing fee is not included as surplus lines premium for the purpose of computing taxes and stamping fees.

R590-157-5. Authorized Agency.

A. The commissioner hereby authorizes the Surplus Line Association of Utah to act as his agent for:

(1) collecting and remitting the premium tax imposed by Section 31A-3-301 on insurance transactions described in Sections 31A-15-103, 31A-15-104, and 31A-15-106;

(2) examining surplus lines transactions under Section 31A-15-111; and

(3) collecting the stamping fee authorized under Section 31A-15-103(11).

B. The Surplus Line Association shall remit all premium taxes it collects in accordance with the procedures of Section 6.

R590-157-6. Accounting Procedures.

A. Within 60 days of the effective date of a surplus lines transaction, the surplus lines producer must file with the Surplus Line Association a copy of the policy, binder, certificate, endorsement, or other documentation sufficient to identify the subject of the insurance; the coverage, conditions, and term of insurance; the type of transaction; the effective date; the premium charged; the premium taxes payable; the name and address of the policyholder and the insurer.

B. The Surplus Line Association may prescribe the forms and procedures to be used by surplus lines producers in fulfilling Section R590-157-5.

C. The Surplus Line Association shall prepare a monthly statement of surplus lines transactions reported during the preceding 30 days for each surplus lines producer. This statement shall list the transactions and premium amounts reported, the surplus lines premium taxes due under 31A-3-301, and the stamping fee due under Subsection 31A-15-103(11)(d).

D. The monthly statement shall be mailed to the surplus lines producers by the 5th day of each month.

E. By the 25th day of each month the surplus lines producer shall remit payment in full to the Surplus Line Association amounts due shown on the monthly statement. Premium taxes and stamping fees shall be held in trust by the surplus lines producer until remitted to the Surplus Lines Association.

F. Within three days of the date received, the Surplus Line Association shall deposit in a qualified depository approved by the Office of the State Treasurer, for the credit of the Utah Insurance Department, all funds received as payment of the surplus lines premium tax.

G. For tax credits for return premiums, which are not offset by charges in the monthly statement, the Surplus Line Association shall submit a request for payment to the Insurance Department. A reimbursement will be issued to the designated person by the Insurance Department pursuant to the Division of Finance's policies and procedures.

H. The Surplus Line Association shall prepare the following reports for the benefit of the commissioner.

(1) A monthly report shall be prepared listing the surplus lines producers reporting premiums written during the month and the amount of the premiums, taxes and fees reported. The report shall also list the names of surplus lines insurers and the amount of written premium attributed to them for the month. This report shall be submitted by the 15th of the subsequent month.

(2) An annual report shall be prepared on the basis of both surplus lines producers and surplus lines insurers and shall list all premiums reported and taxes paid during the previous calendar year. This report shall be submitted to the commissioner by January 31 of each year.

(3) An annual financial report including income and expense and balance sheet for the Surplus Lines Association shall be submitted to the commissioner within 30 days of the end of the Association's fiscal year.

R590-157-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-157-8. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule effective January 1, 2009.

R590-157-9. 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: insurance fee, taxes

January 1, 2018	**31A-2-201**
Notice of Continuation January 7, 2013	**31A-3-303**
	31A-15-103

R590. Insurance, Administration.
R590-164. Uniform Health Billing Rule.
R590-164-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsection 31A-22-614.5 which authorizes the commissioner to adopt uniform claim forms, billing codes, and compatible systems of electronic billing.

R590-164-2. Purpose.

The purpose of this rule is to designate uniform claim forms, billing codes and compatible electronic data interchange standards for use by health payers and providers.

R590-164-3. Applicability and Scope.

(1) This rule applies to health claims, health encounters, and electronic data interchange between payers and providers.

(2) Except as otherwise specifically provided, the requirements of this rule apply to payers and providers.

(3) This rule does not prohibit a payer from requesting additional information required to determine eligibility of the claim under the terms of the policy or certificate issued to the claimant.

(4) This rule does not prohibit a payer or provider from using alternative forms or procedures specified in a written contract between the payer and provider.

(5) This rule does not exempt a payer or provider from data reporting requirements under state or federal law or regulation.

R590-164-4. Definitions.

As used in this rule:

(1) Uniform Claim Forms are defined as:

(a) "UB-04" means the health insurance claim form maintained by NUBC for use by institutional care providers.

(b) "Form CMS 1500" means the health insurance claim form maintained by NUCC for use by health care providers.

(c) "J400" means the uniform dental claim form approved by the American Dental Association for use by dentists.

(d) "NCPDP" means the National Council for Prescription Drug Program's Claim Form or its electronic counterpart.

(2) Uniform Claim Codes are defined as:

(a) "ASA Codes" means the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.

(b) "CDT Codes" means the current dental terminology prescribed by the American Dental Association.

(c) "CPT Codes" means the current physicians procedural terminology, published by the American Medical Association.

(d) "DRG Codes" means Diagnosis Related Group codes. DRG's are universal grouping that are used to clarify the type of inpatient care received. The DRG code, along with a diagnosis code and the length of the inpatient stay, are used to determine payment and reimbursement for claims.

(e) "HCPCS" means HCFA's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's (AMA's) Physician Current Procedural Terminology, codes, alphanumeric codes, and related modifiers. This includes:

(i) "HCPCS Level 1 Codes" which are the AMA's CPT codes and modifiers for professional services and procedures.

(ii) "HCPCS Level 2 Codes" which are national alphanumeric codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT codes.

(f) "ICDCM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and Human Services.

(g) "NDC" means the National Drug Codes of the Food and Drug Administration.

(h) "UB04 Rate Codes" means the code structure and instructions established for use by the National Uniform Billing Committee.

(3) "Electronic Data Interchange Standard" means the:

(a) ASC X12N standard format developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides as modified by the Utah Health Information Network (UHIN) Standards Committee;

(b) other standards developed by the UHIN Standards Committee at the request of the commissioner; and

(c) as adopted by the commissioner by rule.

(4) "HPID" means Health Plan Identifier. HPID is the national unique health plan identifier assigned to identify individual health plans.

(5) "NPI" means National Provider Identifier. A NPI is a unique ten digit identification number required by HIPAA for all health care providers in th3e United States. Providers must use their NPI to identify themselves in all HIPAA transactions.

(6) "Payer" means an insurer or third party administrator that pays for, or reimburses for the costs of health care expense.

(7) "Provider" means any person, partnership, association, corporation or other facility or institution that renders or causes to be rendered health care or professional services, and officers, employees or agents of any of the above acting in the course and scope of their employment.

(8) "UHIN Standards Committee" means the Standards Committee of the Utah Health Information Network.

(9) "CMS" means the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. CMS replaced HCFA.

(10) "HIPAA" means the federal Health Insurance Portability and Accountability Act.

(11) "NUBC" means the National Uniform Billing Committee.

(12) "NUCC" means the National Uniform Claim Committee.

R590-164-5. Paper Claim Transactions.

Payers shall accept and may require the applicable uniform claim forms completed with the uniform claim codes.

R590-164-6. Electronic Data Interchange Transactions.

(1) The commissioner shall use the UHIN Standards Committee to develop electronic data interchange standards for use by payers and providers transacting health insurance business electronically. In developing standards for the commissioner, the UHIN Standards Committee shall consult with national standard setting entities including but not limited to Centers for Medicare and Medicaid Services (CMS), the National Uniform Claim Form Committee, ASC X12, NCPDP, and the National Uniform Billing Committee.

(2) Standards developed and adopted by the UHIN Standards Committee shall not be required for use by payers and providers, until adopted by the commissioner by rule.

(3) Payers shall accept the applicable electronic data if transmitted in accordance with the adopted electronic data interchange standard. Payers may reject electronic data if not transmitted in accordance with the adopted electronic data interchange standard.

(4) The following HIPAA+ electronic data interchange standards developed and adopted by the UHIN Standards Committee and adopted by the commissioner are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours or at www.insurance.utah.gov.

(a) "999 Implementation Acknowledgement For Health Care Insurance v3.4." Purpose: To detail the standard transaction for the reporting of transmission receipt and transaction or functional group X12 and implementation guide error. This standard adopts the use of the ASC X12 999 transaction.

(b) "Administrative Transaction Acknowledgements Standard v3.1." Purpose: To create a process for acknowledging all electronic transactions between trading partners based on the communication, syntax semantic and business process specifications.

(c) "Anesthesia Standard v3.1." Purpose: to standardize the transmission of anesthesia data for health care services. This standard does not alter any contractual agreement between providers and payers.

(d) "Applied Behavioral Analysis, ABA, Billing Standard V3.0." Purpose: To provide detail of the billing for the transmission of ABA services.

(e) "Benefits and Enrollment Standard v3.1." Purpose: To detail the standard transactions for the transmission of health care benefits enrollment and maintenance.

(f) "Claim Acknowledgement Standard v3.2." Purpose: To provide a standardized claim acknowledgement in response to a claim submission. This transaction is used to report on the status of a claim/encounter at the pre-adjudication processing stage, for example, before the payer is legally required to keep a history of the claim or encounter.

(g) "Claim Status Inquiry and Response Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care claim status inquiries and response. The transaction is intended to allow the provider to reduce the need for claim follow-up and facilitate the correction of claims.

(h) "CMS 1500 Paper Claim Form Standard v3.3." Purpose: To clearly describe the standard use of each Box, for print images, and its crosswalk to the HIPAA 837 005010X222A1 Professional implementation guide.

(i) "Coordination of Benefits Standard v3.2." Purpose: To streamline the coordination of benefits process between payers and providers or payer to payers. The standard is to define the data to be exchanged for coordination of benefits and to increase effective communications.

(j) "Dental Claim Billing Standard -- J430 v3.2" Purpose: To describe the standard use of each item number, for print images, and its crosswalk to the HIPAA 837 005010x02241A1 dental implementation guide. This standard adopts the ADA dental Claim Form J340.

(k) "Electronic Remittance Advice Standard v3.5." Purpose: To detail the standard transactions for the transmission of health care remittance advices.

(l) "Eligibility Inquiry and Response Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care eligibility inquiries and responses.

(m) "Health Care Claim Encounter Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care claims and encounters and associated transactions.

(n) "Health Identification Card Standard v1.2." Purpose: To standardize the patient health identification card information. This identification card addresses the human-readable appearance and machine-readable information used by the healthcare industry to obtain eligibility.

(o) "Health Plan Identifier, HPID, and Other Entity Identifier, OEID, Standard v1.1." Purpose: The purpose of the standard is to inform providers of the HIPD and OEID and their usage within the administrative transactions.

(p) "Home Health Standard v3.0." Purpose: To provide a uniform standard of billing for home health care claims and encounters.

(q) ICD-10 Standard v1.2. Purpose: To create the business requirement for payers and providers to implement the International Classification of Diseases 10th Revisions, ICD-10, within the administrative transaction.

(r) "Individual Name Standard v2.0." Purpose: To provide guidance for entering names into provider, payer or sponsor systems for patients, enrollees, as well as all other people associated with these records.

(s) "National Provider Identifier Standard v3.0." Purpose: To inform providers of the national provider identifier requirements and the usage within the transactions.

(t) "Pain Management Standard v3.1." Purpose: To provide a uniform method of submitting pain management claims, encounters, pre-authorizations, and notifications.

(u) "Patient Identification Number Standard v3.0." Purpose: To describe the standard for the patient identification number.

(v) "Premium Payment Standard v3.0." Purpose: To detail the standard transactions for the transmission of premium payments.

(w) "Prior Authorization/Referral Standard v3.0." Purpose: To provide general recommendations to payers and providers about handling electronic prior authorization and referrals.

(x) "Required Unknown Values Standard v3.0." Purpose: To provide guidance for the use of common data values that can be used within the HIPAA transactions when a required data element is not known by the provider, payer or sponsor for patients, enrollees, as well as all other people associated with these transactions. These data values should only be used when the data is truly not available or known. These values should not to be used to replace known data.

(y) "Telehealth Standard v3.1." Purpose: To provide a uniform standard of billing for health care claims and encounters delivered via telehealth.

(z) "Transparency Administration Performance Standard v1.2," Purpose: To establish performance measures that report the average telephone answer time and claim turnaround time.

(aa) "Transparency Denial Standard v1.3." Purpose: To establish performance measures that report the number and cost of an insurer's denied health claims and to provide guidance pertaining to the reporting method and timeline.

(ab) "UB04 Form Locator Elements Standard v3.0." Purpose: To clearly describe the use of each form locator in the UB04 claim billing form and its crosswalk to the HIPAA 837 005010X223A2 institutional implementation guide.

R590-164-7. Enforcement Date.

The commissioner will begin to enforce the revised provisions of this rule April 1, 2018.

R590-164-8. Separability.

If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

KEY: insurance law
December 8, 2017 31A-22-614.5
Notice of Continuation March 10, 2015

R590. Insurance, Administration.
R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance.
R590-215-1. Authority.

This rule is promulgated by the commissioner of Insurance under the general authority granted under Subsection 31A-2-201(3) and incorporates by reference the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective July 1, 2002, and excluding 2560.503-1(a). This federal regulation may be obtained from the Utah Insurance Department.

R590-215-2. Purpose.

This rule recognizes arbitration as an acceptable method of alternative dispute resolution with regards to health benefit plans. This rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

(1) define the term "permissible arbitration provision" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(2); and

(2) provide guidelines upon which disclosure of a contract arbitration provision is to be made.

R590-215-3. Applicability and Scope.

(1) This rule applies to the following individual and group policies issued or renewed on or after July 1, 2002:

(a) income replacement policies; and

(b) health benefit plans.

(2) Long Term Care and Medicare supplement policies are not considered health benefit plans.

R590-215-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301, 78B-11-102, 29 CFR 2560.503-1(m), and the following:

(1) "Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan. With respect to individual or group health benefit plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(2) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(3) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

(4) "Voluntary binding arbitration" means a contract provision that, at the election of the insured, requires an insurer to submit to arbitration as set forth in such contract, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-215-5. Rule.

(1) Compulsory binding arbitration is not a permissible arbitration provision.

(2) Compulsory non-binding arbitration is a permissible arbitration provision when utilized as an internal review of an adverse benefit determination under 29 CFR Subsection 2560.503-1(c)(4).

(3) Voluntary binding arbitration, at the election of an insured party, is a permissible arbitration provision, and may only be used as a voluntary level of review under 29 CFR Subsection 2560.503-1(c)(3)(iii).

(4) Policy forms containing compulsory binding or voluntary binding arbitration provisions for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.

(5) Each application pertaining to an individual or group health benefit plan, and income replacement policy, which contains a voluntary arbitration provision, must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF, THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR, A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. THE COMPANY SHALL BEAR THE COSTS OF ARBITRATION, FILING FEES, ADMINISTRATIVE FEES AND ARBITRATOR FEES. OTHER EXPENSES OF ARBITRATION, INCLUDING, BUT NOT LIMITED TO: ATTORNEY FEES, EXPENSES OF DISCOVERY, WITNESSES, STENOGRAPHER, TRANSLATORS, AND SIMILAR EXPENSES, WILL BE BORNE BY THE PARTY INCURRING THOSE EXPENSES. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES, IF ALLOWED BY STATE LAW, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policyholder and, shall be contained in the certificate of insurance or other disclosure of benefits.

(6) A voluntary binding arbitration provision may not preclude a dispute from being resolved through any small claims court having jurisdiction.

(7) All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act," Title 78B, Chapter 11.

(8) Any such agreement for arbitration shall not obligate an insured to pay for the arbitration in accordance with 29 CFR 2560.503-1(c)(3)(v).

(9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

R590-215-6. Severability.

If any provision of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R590-215-7. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule when they take effect.

KEY: health insurance arbitration
May 20, 2003 31A-2-201
Notice of Continuation December 8, 2012 29 CFR 2560.503-1

R590. Insurance, Administration.
R590-225. Submission of Property and Casualty Rate and Form Filings.
R590-225-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Sections 31A-2-201.1 and 31A-19a-203, and Subsections 31A-2-201(3) and 31A-2-202(2).

R590-225-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) property and casualty and title form filings required by Section 31A-21-201;

(b) property and casualty and title rates, and supplementary information under Section 31A-19a-203;

(c) service contract form filings required by Subsection 31A-6a-103(2); and

(d) bail bond form filings required by Section 31A-35-607 and Rule R590-196.

(e) guaranteed asset protection waiver filings required by Sections 31A-6b-202 and 31A-6b-203.

(2) This rule applies to all lines of property and casualty insurance, including title insurance, bail bond, service contracts, and guaranteed asset protection waivers.

R590-225-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following filing are hereby incorporated by reference and are available on the department's web site, http://www.insurance.utah.gov.

(a) "NAIC Uniform Property and Casualty Transmittal Document", dated January 1, 2017;

(b) "NAIC Uniform Property and Casualty Coding Matrix", dated January 1, 2017;

(c) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated April 2017; and

(d) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated April 2017.

R590-225-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Electronic Filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, or

(b) filing submitted via an email system.

(3) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(4) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(5) "Filer" means a person who submits a filing.

(6) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(7) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(8) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(9) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(10) "Type of Insurance" means a specific line of property and casualty insurance including general liability, commercial property, workers compensation, automobile, homeowners, title, bail bond, service contracts, and guaranteed asset protection waivers.

(11) "Use And File" means a filing can be used, sold, or offered for sale if it is filed within a stated period of time after its initial use.

(12) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-225-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) Rates, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing;

(c) will not be reopened for purposes of resubmission.

(5) A prior filing will not be researched to determine the purpose of the current filing.

(6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction:

(a) If the filing is in an open status, corrections can be made at any time.

(b) If the filing is in a closed status, a new filing is required. The filer must reference the original filing in the filing description.

(8) If responding to a Response to Filing Objection Letter or an Order to Prohibit Use, refer to R590-225-13 for instructions.

(9) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information. A filing that is withdrawn may no longer be used.

R590-225-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) EXCEPTION: bail bond agencies, service contract providers, and guaranteed asset protection providers may choose to use email instead of SERFF to submit a filing.

(2) All rate filings for private passenger auto, homeowners, or workers compensation type of insurance must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(3) A filing must be submitted by market type and type of insurance, not by annual statement line number.

(4) A filing may not include more than one type of insurance, unless the filing is a commercial or personal inter-line form filing. The inter-line use of a form must be explained in the Filing Description.

(5) A filer may submit a filing for more than one insurer if all applicable companies are listed.

(6) SERFF Filing.

(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description Section with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(b) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(c) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rates and supplementary rating information must be attached to the Rate/Rule Schedule tab.

(iii) The actuarial certification required by R590-225-6(2) must be attached to the supporting documentation tab.

(d) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(7) A complete EMAIL filing consists of the following when submitted by a bail bond agent, a service contract provider, or a guaranteed asset protection provider:

(a) The title of the EMAIL must display the company name only.

(b) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in R590-225-3(2), must be properly completed.

(i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

(A) "NAIC Coding Matrix;"

(B) "NAIC Instruction Sheet;" and

(C) "Utah Property and Casualty Content Standards."

(ii) Do not submit the documents described in (A), (B), and (C) with the filing.

(c) Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the Filing Description with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(f) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.

R590-225-7. Procedures for Form Filings.

(1) Forms in general:

(a) Forms are "File And Use" filings. EXCEPTION: service contracts, bail bonds, and guaranteed asset protection waivers are "File Before Use".

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form. A draft may not be submitted.

(2) If you have authorized a Rate Service Organization (RSO) to make form filings on your behalf, no filing by you is required if you implement the filings as submitted by the

RSO.

(a) A filing is required if you delay the effective date, non-adopt or alter the filing in any way.

(b) Your filing must be received by the department before the RSO effective date.

(c) We do not require that you attach copies of the RSO's forms when you reference a filing.

(3) If you have NOT authorized an RSO to file forms on your behalf, you must include, in your filing a letter stating your intent to adopt any RSO forms for your use.

(a) Copies of the RSO forms are not required.

(b) Your filing must include a complete list of the RSO forms you intend to adopt by form number, title/name and filing identification number of the RSO.

(4) A "Me Too" filing, referencing a filing submitted by another insurer, bail bond agency, or service contract provider is not permitted.

(5) If a previously filed Utah amendatory endorsement will be used in connection with the form being filed, explain this in the Filing Description section of the transmittal form and include a copy with the filing.

(6) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal:

(a) only one copy of each form is required;

(b) If the name of each respective company or unique insurer logo is printed on each separate set of the form, then a separate form must be filed for each insurer.

(7) Since a form may be used once it is "Filed" and must be "Filed" before it can be used, sold or offered for sale, you do not need to re-file or notify the department if the implementation date of the original filing changes.

R590-225-8. Procedures for Rate and Supplementary Information Filings.

(1) Rates and supplementary information in general.

(a) Rates and supplementary information are "Use And File" filings. EXCEPTION: title and workers compensation rates and supplementary information are "File Before Use" filings.

(b) Service contract providers, bail bond agencies, and guaranteed asset protection providers are exempt from this section.

(c) All rate filings for private passenger auto, homeowners, or workers compensation type of insurance must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(2) If you have authorized a Rate Service Organization (RSO) to make a prospective loss cost, supplementary information filing, or both, on your behalf, no filing by you is required if you implement the filing as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt, or alter the filing in any way.

(b) Any such filing must be received by the department within 30 days of the effective date established by the RSO.

(c) We do not require that you attach copies of the RSO's manual pages when you reference an RSO filing.

(3) If you have NOT authorized an RSO to file the prospective loss cost, supplementary rating information, or both, on your behalf

(a) you must include in your filing a letter stating your intent to adopt the RSO prospective loss cost, supplementary rating information filing, or both.

(b) You must file copies of any manual pages as if they were your own and provide your actuarial justification.

(4) A "Me Too" filing, referencing a filing submitted by another licensee, is not permitted.

(5) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal and the supporting data and manual pages are identical for each insurer included in the filing, only one copy of the supporting data and manual pages are required to be submitted.

(6) Rate and supplementary information filings must be supported and justified by each insurer.

(a) Justification must include:

(i) submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates; and

(ii) a complete explanation as to the extent to which each factor has been used.

(b) Underwriting criteria are not required unless they directly affect the rating of the policy.

(c) Underwriting criteria used to differentiate between rating tiers is required.

(7) When submitting a filing for any kind of rating plan, rating modification plan, or credit and debit plan, an insurer must include in the filing:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(c) A filing will be rejected as incomplete if it fails to specifically provide this information.

(8) Utah and countrywide statistical data for the latest three years available must be submitted with each filing.

(a) This data should include earned premiums, incurred losses, loss ratios, establishment of expense factors, and expected loss ratios.

(b) Calculations involved in establishing rates from loss experience are to be exhibited including the establishment of trend factors, loss development factors, etc.

(c) If any of the above information is not available, a detailed explanation of why must be provided with the filing.

(9) Prospective loss cost and loss cost multiplier.

(a) Loss cost multiplier.

(i) An individual insurer adjustment to the RSO prospective loss cost must be made as part of the calculation of the loss cost multiplier and must be included in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(ii) This form allows for the inclusion of an individual insurer modification of the RSO prospective loss cost.

(10) Procedures for Reference Filings to Advisory Prospective Loss Cost.

(a) An RSO does not usually file an advisory rate that contains provisions for expenses, other than loss adjustment expenses.

(i) An RSO develops and files with the commissioner a "Reference Filing" containing advisory prospective loss cost and supporting actuarial and statistical data.

(ii) Each insurer must individually determine the rates it will file and the effective date of any rate changes.

(b) If an insurer that is a member, subscriber or service purchaser of any RSO determines to use the prospective loss cost in an RSO Reference Filing in support of its own filing, the insurer must make a filing using the "Utah Insurer Loss Cost Multiplier Filing Forms."

(c) The insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost multiplier contained in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(d) An insurer may file a modification of the prospective loss cost in the RSO Reference Filing based on its own anticipated experience.

(e) Actuarial justification is required for a modification, upwards or downwards, of the prospective loss cost in the Reference Filing.

(f) An insurer may request to have its loss cost

adjustments remain on file and reference all subsequent RSO prospective loss cost Reference Filings.

(i) Upon receipt of subsequent RSO Reference Filings, the insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost adjustments contained in the "Utah Insurer Loss Cost Multiplier Filing Forms" on file with the commissioner, and will be effective on the effective date of the prospective loss cost.

(ii) The insurer need not file anything further with the commissioner.

(g) If the filer wants to have its filed loss cost adjustments remain on file with the commissioner, but intends to delay, modify, or not adopt a particular RSO's Reference Filing, the filer must make an appropriate filing with the commissioner.

(h) An insurer's filed loss cost adjustments will remain in effect until the filer withdraws them or files a revised "Utah Insurer Loss Cost Multiplier Filing Form."

(i) A filer may file such other information the filer deems relevant.

(j) If an insurer wishes to use minimum premiums, it must file the minimum premiums it proposes to use.

(11) Supplementary Rate Information.

(a) The RSO files with the commissioner RSO filings containing a revision of rules, relativities and supplementary rate information. These RSO filings include:

(i) policy-writing rules;

(ii) rating plans;

(iii) classification codes and descriptions; and

(iv) territory codes, descriptions, and rules, which include factors or relativities such as, increased limits factors, classification relativities or similar factors.

(b) These filings are made by the RSO on behalf of those insurers that have authorized the RSO to file rules, relativities and supplementary rating information on their behalf.

(c) An RSO may print and distribute a manual of rules, relativities and supplementary rating information.

(d) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions and effective date then the insurer does NOT file anything with the commissioner.

(e) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions as filed, BUT with a different effective date, then the insurer must notify the commissioner of the insurer's effective date within 30 days after the RSO's effective date.

(f) If an insurer has authorized an RSO to file on its behalf, but the insurer decides not to use the revision, then the insurer must notify the commissioner within 30-days after the RSO's effective date.

(g) If an insurer has authorized an RSO to file on its behalf, but the insurer decides to use the revision with modification, then within 30-days of the RSO's effective date the insurer must file the modification specifying the basis for the modification and the insurer's effective date.

(12) Consent-to-rate Filing.

(a) Subsection 31A-19a-203(6) allows an insurer to file a written application for a particular risk stating the insurer's reasons for using a higher rate than that otherwise applicable to a risk.

(b) The Filing Description must indicate that it is a consent-to-rate filing, show the filed rate, the proposed rate, and the reasons for the difference.

(13) Individual Risk Filing.

(a) R590-127, "Rate Filing Exemptions", provides for those circumstances when an Individual Risk filing is permitted.

(b) An individual risk filing must be filed with the commissioner.

(i) The filing shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, and premium development.

(ii) The Filing Description must indicate that it is an individual risk filing, and contain the underwriter's explanation for the filing.

(14) Information Regarding Dividend Plan.

(a) Sections 31A-19a-210 and 31A-21-310 allow for dividend distributions.

(b) A plan or schedule for the distribution of a dividend developed AFTER THE INCEPTION of a policy is NOT considered a rating plan and does not have to be filed according to the provisions of this rule.

(c) A plan or schedule for the distribution of a dividend applicable to an insurance policy FROM ITS INCEPTION are required to be filed pursuant to Section 31A-21-310.

(15) The Utah Insurance Code allows tiered rating plans within one insurer or insurer group with common ownership.

(a) A filing must show that the tiers are based on mutually exclusive underwriting rules, which are based on clear, objective criteria that would lead to a logical distinguishing of potential risk.

(b) A filing must provide supporting information that shows a clear distinction between the expected losses and expenses for each tier.

(c) If an insurer group is using a tiered rating structure, the group of insurers cannot all file the same loss cost multiplier and then file standard percentage deviations.

(i) A difference must be demonstrated in the loss cost multiplier formula, either as a modification of the RSO prospective loss cost or in the insurer expense factor.

(ii) An individual insurer adjustment or modification must be supported by actuarial data which establishes a reasonable standard for measuring probable insurer variations in historical or prospective experience, underwriting standards, expense and profit factors.

R590-225-9. Additional Procedures for Workers Compensation Rate Filings.

The following are additional procedures for workers' compensation rate filings:

(1) All rate filings for workers compensation must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(2) Rates and supplementary information must be filed 30 days before they can be used.

(3)(a) Each insurer must individually determine the rates it will file.

(b) Filed rates.

(i) An insurer's workers' compensation filed rates are the combination of the most current prospective loss cost filed by the designated rate service organization and the insurers loss cost adjustment, known as the loss cost multiplier (LCM), as calculated and filed using the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Form."

(ii) Each insurer must implement the designated rate service organization's current prospective loss cost on the effective date assigned by the designated rate service organization. INSURERS MAY NOT DEFER NOR DELAY ADOPTION.

(iii) An insurer's filed loss cost multiplier will remain in effect until the insurer withdraws it or files a new loss cost multiplier.

(iv) Upon receipt of subsequent designated rate service organization reference filings, the insurer's filed rates are the combination of the designated RSO's prospective loss cost and the loss cost multiplier contained in the insurer's most

current "Utah Loss Cost Multiplier Filing Form" on file with the department.

(4) An insurer may file a modification to the designated rate service organization prospective loss cost in the subject reference filing based on its own anticipated experience. Supporting documentation will be required for any modifications, upwards or downwards, of the designated rate service organization prospective loss cost.

(5) An insurer may vary expense loads by individual classification or grouping. An insurer may use variable or fixed expense loads or a combination of these to establish its expense loadings. However, an insurer is required to file data in accordance with the uniform statistical plan filed by the designated rate service organization.

(6) When submitting a filing for a workers compensation rating plan, a rating modification plan, or a credit and debit plan, an insurer must include in the filing the following or it will be rejected as incomplete:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(7) To the extent that an insurer's rates are determined solely by applying its loss cost multiplier, as presented in the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Forms" to the prospective loss cost contained in a designated rate service organization reference filing and printed in the designated rate service organization's rating manual, the insurer need not develop or file its rate pages with the commissioner. If an insurer chooses to print and distribute rate pages for its own use, based solely upon the application of its filed loss cost multiplier, the insurer need not file those pages with the insurance commissioner.

R590-225-10. Additional Procedures for Title Rate Filings.

(1) Title rate and a supplementary information filing are "File Before Use" filings. Rates and supplementary information shall be filed with the commissioner 30 days prior to use.

(2) Each change or amendment to any schedule of rates shall state the effective date of the change or amendment, which may not be less than 30 days after the date of filing. Any change or amendment remains in force for a period of at least 90 days from its effective date.

(3) Supplementary information and rate filings must be supported and justified by each insurer. Justification must include submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates along with a complete explanation as to the extent to which each factor has been used.

(4) Rates that vary by risk classification such as extended coverage or standard coverage, and all discount factors, such as refinance, subdivision, or construction for purpose of resale discounts, must be supported by differences in expected losses or expenses.

(5) No rate may be filed or used which would require the title insurer or any title agency or producer to operate at less than the cost of doing business or adequately underwriting the title insurance policies.

R590-225-11. Classification of Documents.

(1) The Department will not classify as protected, certain information in property and casualty rate filings unless these procedures are complied with.

(2) Section 31A-19a-204 requires rates, and supplementary rate information to be open for public inspection. Supporting information in a rate filing is not designated under Section 31A-19a-204 as public information, however, under the Government Records Access and Management Act (GRAMA) supporting information in a rate filing would be considered open for public inspection unless it is classified as private, controlled, or protected. Under GRAMA the Department may classify certain information in a record as private, controlled, or protected. It is clear that the only category applicable to rate, rule and form filings other than as a public record is as a protected record. If a record is classified as protected, the Department may not disclose the information in the record to third persons specifically and to the public generally.

(3) The only information the Department may classify as protected, absent clear documentation otherwise, in accordance with Section 63G-2-305 are the following items:

(a) Information deemed to be trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) "Commercial Information and non-individual financial information obtained from a person which:"

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future ; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(4) The person submitting the information under R590-225-11(3)(a) or (b) above and claiming that such is or should be protected has provided the governmental entity with the information in Subsection 63G-2-309(1)(a)(i).

(5) The department will handle supporting information a filer submits as part of a rate filing in the following manner:

(a) The filer will need to request which specific document the filer believes qualifies under GRAMA Subsection 63G-2-305(1) or (2) or both when the filing is submitted; and

(b) the document must include a written statement of reasons supporting the request that the information should be classified as protected.

(c) If the filer does not request the information in the document to be classified as protected, the document will be classified as public.

(d) The Department will not automatically classify any document in a filing as protected.

(e) The Department will not re-open a filing to permit a company to request protected classification of previously filed documents.

(6) Once the filing has been received, the Department will review the documents the filer has requested to be classified as protected to see if it meets the requirements of Subsection 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected, and the information will not be available to the public or third parties.

(b) If all the information in the document does not meet the requirements for being classified as protected, the Department will notify the filer of the denial, the reasons therefore, and of the filer's right under GRAMA to appeal the denial. The filer will have 30 days to appeal the denial as

allowed by Section 63G-2-401. Despite the denial of classifying the information as protected, the Department, pursuant to GRAMA, will nonetheless treat the information as if it had been classified as protected until:

(i) the filer has notified the Department that the filer withdraws the request for designation as protected; or

(ii) the 30 day time limit for an appeal to the Commissioner has expired; or

(iii) the filer has exhausted all appeals under GRAMA and the documentation has been found to be a public document.

(c) If the filer combines in the same document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

(7) Filings submitted that show a pattern of requesting non-qualifying items as a protected document may be considered a violation of this rule. This would include putting both protected and public information in one document.

R590-225-12. Correspondence, and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing; and

(c) Submission method, SERFF, or email; and

(d) tracking number

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-225-13. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) for filings submitted in SERFF, attach the documents described in R590-225-12(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(3) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-225-14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-225-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-225-16. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: property casualty insurance filing

December 8, 2017	**31A-2-201**
Notice of Continuation February 20, 2014	**31A-2-201.1**
	31A-2-202
	31A-19a-203

R590. Insurance, Administration.
R590-267. Personal Injury Protection Relative Value Study Rule.
R590-267-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-22-307(2).

R590-267-2. Purpose.

(1) The purpose of this rule is to establish a reasonable value of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a).

(2) As required by Subsection 31A-22-307(2), the reasonable value is based on the 75th percentile of medical, dental, and chiropractic charges, as they presently exist in the most populous county in this State.

R590-267-3. Scope.

This rule applies to services and accommodations provided:

(1) under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a); and

(2) on or after January 1, 2014.

R590-267-4. Definitions.

(1) As used in this rule "Conversion Factor" means a multiplier used to convert the relative value unit or units of a service or a procedure to a reimbursement rate.

(2) As used in this rule "RVD 2017" means 2017 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(3) As used in this rule "RVD 2015" means 2015 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(4) As used in this rule "RVP 2017" means 2017 Edition of the Relative Values for Physicians published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(5) As used in this rule "RVP 2015" means 2015 Edition of the Relative Values for Physicians published by Optum 360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(6) As used in this rule "Relative Value Unit" means a numerical value assigned to a medical or dental procedure as published in RVP and RVD respectively.

(7) The publications identified in Subsections R590-267-4(2), (3), (4), and (5) are hereby incorporated by reference within this rule.

R590-267-5. Conversion Factors.

(1)(a) The following conversion factors shall be used with RVP 2017 to determine the reasonable value of medical services or accommodations provided on or after January 1, 2018:

(i) anesthesia, 99.27;
(ii) surgery, 225.90;
(iii) radiology, 37.50;
(iv) pathology, 25.00;
(v) medicine, 13.00;
(vi) evaluation and management, 14.65.

(b) The conversion factor used with RVD 2017 to determine the reasonable value of dental services or accommodations provided on or after January 1, 2018 shall be 63.00.

(2)(a) The following conversion factors shall be used with RVP 2015 to determine the reasonable value of medical services or accommodations provided from January 1, 2016 through December 31, 2017:

(i) anesthesia, 97.13;
(ii) surgery, 200.00;
(iii) radiology, 35.84;
(iv) pathology, 24.29;
(v) medicine, 11.67;
(vi) evaluation and management, 13.16.

(b) The conversion factor used with RVD 2015 to determine the reasonable value of dental services or accommodations provided from January 1, 2016 through December 31, 2017 shall be 60.00.

R590-267-6. Fee Schedule.

The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assigned to the service or accommodation by the applicable conversion factor prescribed in R590-267-5.

R590-267-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-267-8. 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: relative value study
January 1, 2018 **31A-2-201(3)**
31A-22-307(2)

R590. Insurance, Administration.
R590-271. Data Reporting for Consumer Quality Comparison.
R590-271-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-216 wherein the commissioner may adopt rules to educate health care consumers by producing or collecting and disseminating education materials to consumers.

R590-271-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) define terms;

(b) define the methodology for determining and comparing insurer transparency information;

(c) provide the data and format for submission to the commissioner; and

(d) provide the date the information is due.

(2)(a) This rule applies to all health benefit plans issued or renewed on or after January 1, 2015.

(b) This rule does not apply to an insurer whose health benefit plans cover fewer than 3,000 individual Utah residents.

R590-271-3. Definitions.

In addition to the definitions in Sections 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Electronic Data Interchange Standard" means the:

(a) the standards developed by the UHIN Standards Committee at the request of the commissioner; and

(b) others as adopted by the commissioner by rule.

(2) "SFTP" means the Secure File Transfer Protocol.

(3) "UHIN" means the Utah Health Information Network.

(4) "UHIN Standards Committee" means the Standards Committee of the UHIN.

R590-271-4. Reporting Requirements.

(1)(a) The commissioner has convened a group, as identified in 31A-22-613.5(4)(a), to develop information for consumers to compare health insurers and health benefit plans. As a result of the group's work, the commissioner adopts the following UHIN electronic data interchange standards developed and adopted by the UHIN Standards Committee, which are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours, at www.insurance.utah.gov, or at www.uhin.org:

(i) the Transparency Administration Performance Standard, version 1.2; and

(ii) the Transparency Denial Standards, version 1.2.

(b)(i) Beginning on April 1, 2016, and each year thereafter, an insurer shall submit the reports referenced in R590-271-4(1)(a)

(ii) to UHIN in an electronic data interchange standard which includes data for the previous calendar year.

(c) Each report shall include data for both paper and electronic claims combined.

(d) Submission format, procedures and guidelines are described in detail in the adopted transparency standards published by UHIN.

(2) Beginning on July 1, 2016, and each year thereafter, an insurer shall comply with the reporting guidelines, procedures and format of R428-13 and submit to the Utah Department of Health Office of Health Care Statistics, the Healthcare Effectiveness Data and Information Set, HEDIS, data for the preceding calendar year.

R590-271-5. Records.

The commissioner finds the data submitted to the commissioner in the Transparency Administration Performance Standard and the Transparency Denial Standards to be considered a public record as defined in Section 63G-2-103 for the purpose of display on:

(1) the Health Insurance Exchange as described in Section 63M-1-2505, avenueh.com;

(2) the department's website, insurance.utah.gov; and

(3) the department's transparency website, healthrates.utah.gov.

R590-271-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-271-7. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-271-8. Severability.

If any provision of this rule or its application to any person or circumstances 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: data, data reporting, insurance
December 29, 2017 31A-2-216

R597. Judicial Performance Evaluation Commission, Administration.
R597-3. Judicial Performance Evaluations.
R597-3-1. Evaluation Cycles.

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends on September 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends on September 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends on September 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the justice's next retention election.

(3) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first six months of the retention cycle.

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(g) Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a respondent, but in no event shall any respondent receive more than nine survey requests.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;
(B) case managers;
(C) clerks of court;
(D) trial court executives;
(E) interpreters;
(F) bailiffs;
(G) law clerks;
(H) central staff attorneys;
(I) juvenile probation and intake officers;
(J) other courthouse staff, as appropriate;
(K) Administrative Office of the Courts staff.

(d) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(iii) Courtroom observers, though volunteers, may be eligible to receive compensation in exchange for successful completion of a specified amount of additional courtroom observation work.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form

to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseflow efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than March 1st of the year in which the judge's name appears on the ballot.

(3) Comments received after March 1st of the year in which the judge's name appears on the ballot will be included as part of the judge's mid-term evaluation report in the subsequent evaluation cycle.

(4) Comments received about a judge after the mid-term evaluation cycle ends will be included in the judge's next retention evaluation report.

(5) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

R597-3-6. Judicial Retirements and Resignations.

(1) For purposes of judicial performance evaluation, the commission shall evaluate each judge until the judge:

(a) provides written notice of resignation or retirement to the Governor;

(b) is removed from office;

(c) otherwise vacates the judicial office; or

(d) fails to properly file for retention.

(2) For judges who provide written notice of resignation or retirement after a retention evaluation has been conducted but before it is distributed, the retention evaluation shall be sent to the Judicial Council.

R597-3-7. Publication of Retention Reports.

No later than three months after the filing deadline for a retention election, the commission shall post on its website the retention reports of all judges who have filed for that election.

R597-3-8. Judicial Written Statements.

If, pursuant to Utah Code Ann. Subsection 78A-12-206(3), a judge is eligible to provide a written statement to be included in the judge's evaluation report, the statement shall be due to commission staff, in writing, no later than one week after the deadline for the judge to file a declaration of the judge's candidacy in the retention election.

R597-3-9. Judicial Discipline.

(1) For the purposes of judicial performance evaluation and pursuant to Utah Code Ann. Section 78A-12-205, the commission shall consider any public sanction of a judge issued by the Supreme Court during the judge's current term, including:

(a) During the judge's midterm and retention evaluation cycles and

(b) After the end of the judge's retention evaluation cycle until the commission votes whether to recommend the judge for retention.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys
December 8, 2017 78A-12
Notice of Continuation February 17, 2014

R602. Labor Commission, Adjudication.
R602-3. Procedure and Standards for Approval of Assignment of Benefits.
R602-3-1. Policy, Scope and Authority.

A. Policy. Utah's workers' compensation system provides disability compensation to injured workers as a partial replacement for lost wages. These periodic payments allow injured workers to provide for the ongoing necessities of life--food, shelter and clothing--not only for themselves, but for their dependents. These periodic payments also prevent injured workers from becoming charges on public welfare or private charity.

The 2007 Utah Legislature reaffirmed and strengthened the foregoing policy of the workers' compensation system by enacting Senate Bill 109, "Transfers of Structured Settlements." Senate Bill 109 amended Section 34A-2-422 of the Utah Workers Compensation Act to specifically prohibit any transfer of workers' compensation payment rights unless the proposed transfer is first submitted to the Utah Labor Commission and approved by the Commission.

B. Scope. This rule establishes the procedural and substantive requirements for Commission approval of any request for transfer of workers' compensation payment rights. The Commission will not approve any transfer of workers' compensation payment rights in the absence of strict compliance with all procedural and substantive requirements of the Utah Workers' Compensation Act and this rule.

C. Statutory authority. The Commission enacts this rule pursuant to Subsection 34A-1-104(1) and Section 34A-1-304 of the Utah Labor Commission Act, Section 34A-2-422 of the Utah Workers' Compensation Act, and Subsection 63G-3-201(2) of the Utah Administrative Rulemaking Act.

R602-3-2. Benefits Subject to Assignment.

A. Commission approval a precondition to any action to transfer benefits. Subsection 34A-2-422(3) prohibits any transfer, or action to transfer, workers' compensation payment rights without prior Commission approval. The Commission will not approve any proposed transfer that includes an advance of funds or property, or other similar action, without prior Commission review.

B. Transfer limited to benefits that are fixed and certain. Pursuant to Subsection 34A-2-422(3)(c), Commission approval of a transfer of workers' compensation payment rights is a "full and final resolution" of such payment rights. The Commission will, therefore, approve transfer of only those payment rights that are fixed and certain as a matter of law. The Commission will not approve the transfer of payment rights that are subject to modification under any provision of the Utah Workers' Compensation Act or other applicable law.

C. New petition required for additional transfers. A petition may not request Commission approval of future, open-ended or follow-up transfers of payment rights. A new petition must be submitted for approval of any such additional transfers.

D. Medical benefits. An injured worker is entitled to continuing medical care necessary to treat his or her work-related injuries. These medical benefits are, by their nature, contingent on the injured worker's future medical condition and progress in medical and pharmacological science. For these reasons, medical benefits are not "fixed and certain," and the Commission will not approve any request for transfer of medical benefits.

R602-3-3. Procedure for Requesting Approval.

A. Petition. The transferee shall fully complete the Commission's "Petition for Approval of Transfer of Payment Rights" form. The transferee shall then file the completed petition with the Commission's Adjudication Division. The Adjudication Division shall return to the transferee any petition that is not fully completed, signed, and accompanied with all required documentation.

B. Documentation. Subsection 34A-2-422(3)(b)(ii)(A) requires that the transferor of workers' compensation payment rights receive adequate notice of the workers' compensation benefits proposed to be transferred, as well as an explanation of the financial consequences of, and alternatives to, the proposed transfer. The Commission will therefore require the following documentation to accompany every Petition for Approval of Transfer of Payment Rights.

1. Notice and explanation. The transferee shall provide to the transferor an explanation of the proposed transfer, in writing, with receipt confirmed by the transferor's signature.

a. The notice and explanation must be in plain language. If the transferor is of limited English proficiency, the notice and explanation must also be provided in writing in the transferor's native language.

b. The notice and explanation must contain each of the following items in full detail:

i. A description of the specific workers' compensation payment rights proposed to be transferred;

ii. An explanation of the legal effect of the transfer;

iii. An explanation of all alternatives to the proposed transfer; and

iv. A recommendation that the transferor obtain independent professional advice regarding the advisability of the proposed transfer and the terms of the proposed transfer.

2. Disclosure of financial information. The transferee shall provide written disclosure of financial information regarding the proposed transfer to the transferor, with receipt confirmed by the transferor's signature.

a. The disclosure of financial information must be in plain language. If the transferor is of limited English proficiency, the disclosure must also be provided in writing in the transferor's native language.

b. The disclosure of financial information must contain each of the following items full detail:

i. The amount and due date of each payment to be transferred;

ii. The sum of all payments to be transferred;

iii. The present value of the payments to be transferred, computed in the same manner and using the same discount rate by which future annuity payments are discounted to present value for federal estate tax purposes;

iv. The gross amount payable by the transferee in exchange for the payments to be transferred;

v. The implied annual interest rate that the transferor would be paying if the transfer were viewed as a loan to the transferor of the net amount payable by the transferee, to be paid in installments corresponding to the transferred payments.

vi. An itemized listing for any amount to be deducted from the gross payment, with detailed explanation of the reason for such deduction and the method for computing the deduction;

vii. The net amount to be paid to the transferee;

viii. The amount and method of calculation of any penalties or liquidated damages for which the transferor might be liable under the transfer agreement; and

ix. A statement of the tax consequences of the transfer.

3. Source of workers' compensation payment rights. The transferee shall provide an authenticated copy of the document(s) that establish the transferor's right to the workers' compensation payment rights that are proposed to be transferred.

4. All agreements between the transferor and transferee. All agreements between the transferor and transferee must be

in writing and signed by both the transferor and the transferee. The transferee will provide true and correct copies of all such documents.

C. Notice to other interested parties. After the Adjudication Division has received a petition for approval of transfer of payment rights, and has determined that the petition is complete and is supported by all necessary documentation, the Division will mail copies of the petition and supporting documentation to the following:

1. Each party and attorney who participated in the underlying workers' compensation claim;

2. If the payment right to be transferred arises under a structured workers' compensation settlement, the issuer and owner of the annuity contract that funds the settlement;

3. Any other party having rights or obligations with respect to the payment rights proposed to be transferred;

4. An ombudsman designated by the Industrial Accidents Division for receipt of such petitions; and

5. Any other individual or entity the Division believes may have an interest in the proposed transfer.

D. Hearing. All Petitions for Approval of Transfer of Payment Rights will be assigned to the Director of the Adjudication Division for hearing.

1. The Director will conduct a formal evidentiary hearing on each petition to determine whether the petition should be approved. The hearing will be conducted in accordance with the requirements of the Utah Administrative Procedures Act.

2. No hearing on the merits of a petition will be scheduled prior to 60 days after the notices required by III.C of this rule have been mailed to all parties entitled to such notice.

3. Notice of hearing on the merits of a petition shall be provided to the transferor, the transferee, their attorneys, and all parties listed in III.C.1 through 4 of this rule.

4. The Director will conduct the hearing in such manner as the Director deems proper to obtain all information that may be material to approval or rejection of the proposed transfer.

E. Decision. After hearing, the Director will issue a written decision approving or denying the petition. The Director may approve a petition only if the Director finds:

1. The petition has been submitted in proper form with all required documentation;

2. The notice and explanation required by III.B.1 of this rule and the disclosure of financial information required by III.B.2 of this rule are correct, adequate, and understood by the transferor;

3. The agreement(s) between the transferor and transferee does not include any abusive provisions that are against the transferor's best interests. "Abusive provisions" include, but are not limited to, the following:

a. The transferor's confession of judgment or consent to entry of judgment;

b. Choice of forum or choice of law provisions requiring resolution of disputes in a forum other than the courts and administrative agencies of the State of Utah, or under the laws of a jurisdiction other than Utah; or

c. Requirements that transferors indemnify transferees or reimburse transferees for costs or expenses incurred in disputes between transferors and transferees.

4. The proposed transfer is in the best interest of the transferor, specifically taking into account:

a. The transferor's need for a continuing source of income to provide for future necessities;

b. The needs of the transferor's dependents for a continuing source of support from the transferor to provide for future necessities;

c. Whether the transferor's intended uses of the funds obtained as a result of the transfer are prudent and consistent with the underlying purposes of the workers' compensation system;

d. Whether the transferor possesses the ability to manage, preserve and properly apply the funds to be obtained through the transfer; and

e. Whether other alternatives exist that will better meet the legitimate needs of the transferor and/or satisfy the objectives of the workers' compensation system.

F. Appeal. Any interested party who has participated in the formal evidentiary hearing conducted pursuant to III.D of this rule may request agency review of the Director's decision by following the procedures established in Section 63G-4-301 of the Utah Administrative Procedures Act and Section 34A-1-303 of the Utah Labor Commission Act.

KEY: workers' compensation, administrative procedures, hearings, settlements

December 27, 2017	**34A-1-104(1)**
Notice of Continuation October 4, 2017	**34A-1-301 et seq.**
	34A-4-304
	34A-2-422
	63G-3-201(2)
	63G-4-102 et seq.

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 2017 The Essential RBRVS, 2017 1st Quarter Update," designated as RBRC17/U1787 and U1787R ("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): $65.00;

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): $65.00;

7. Other Surgery: $43.00.

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 27, 2017 **34A-1-104**
34A-2-201

R612. Labor Commission, Industrial Accidents.
R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.
R612-400-1. Policy Reporting by Workers' Compensation Insurance Carriers.

An insurance carrier writing workers' compensation insurance in Utah shall report to the Division the information required by Section 34A-2-205 of the Utah Workers' Compensation Act as follows:

A. The report shall be filed on behalf of the insurance carrier by an agent that has been approved by the Division as meeting the Division's filing standards.

B. The insurance carrier's agent shall submit the information electronically in accordance with the standards and format established by the International Association of Industrial Accidents Boards and Commissions (IAIABC).

C. Consequences of Failure to Comply.

1. Pursuant to Subsection 34A-2-205(1) of the Utah Workers' Compensation Act, the division may impose civil assessments up to $150 for failure to properly report insurance policy information per the requirements of this rule.

D. Assessments will be issued on a per file or reported policy basis rather than on each individual error within a file or reported policy.

E. The opportunity to correct the filing errors, the amount of the assessments, and the method of issuing shall be set by the division's policies and procedures.

F. Assessments shall be issued in the form of an order signed by the division's presiding officer and pursuant to the requirements contained in Section 63G-4-203.

G. An aggrieved party may seek agency review of any order pursuant to Section 63G-4-301.

R612-400-2. Workers' Compensation Coverage for Professional Employer Organizations and Client Companies.

A. Purpose, Authority and Scope.

1. Purpose. The Utah Professional Employer Organization Licensing Act, Title 31A, Chapter 40, Utah Code Annotated, ("the Act") allows a professional employer organization ("PEO") and a client company to establish a contractual relationship by which the PEO and client company are co-employers of some or all of the client company's workers. This rule establishes workers' compensation coverage and reporting requirements for such co-employment relationships.

2. Authority. This rule is enacted pursuant to authority granted by Section 34A-40-209 of the Act.

3. Scope. This rule applies only to those situations in which one or more workers are co-employees of a PEO and client company. The rule does not apply to workers who are solely employed by either a PEO or a client company. In such cases, the coverage and reporting requirements generally applicable to sole employers must be followed.

B. Alternatives for Providing Workers' Compensation Insurance Coverage for Co-employees.

1. Coverage provided by Client Company utilizing a PEO. A client company may provide workers' compensation coverage for co-employees of the client company and PEO by purchasing an insurance policy from a workers' compensation insurance company. The insurance policy shall list the client company as the named insured and shall provide coverage for the PEO as an additional insured by means of an individual endorsement.

2. Coverage provided through a PEO for a client company. Alternatively, a PEO may provide workers' compensation coverage for co-employees of the client company and PEO by purchasing an insurance policy, if available, from a workers' compensation insurance company. The insurance policy shall list the PEO as the named insured and shall provide coverage for the client company as an additional insured by means of an individual endorsement.

C. Insurance Carrier Reporting Obligation.

1. New Policies. An insurance company providing workers' compensation coverage to a PEO and client company shall comply with the reporting requirements set forth in Subsection R612-400-1. Such reports shall identify any PEO or client company covered by endorsement under the policy.

2. Additional insureds under an existing policy. If an insurance company extends coverage under an existing policy to a PEO or client company by means of an additional endorsement, the company shall report such additional endorsement and coverage to the Division in accordance with the requirements of Section R612-400-1.

3. Cancellations. An insurance company shall notify the Division of cancellation of coverage for any PEO or client company by complying with the requirements of Section R612-400-1. Failure by an insurance company to provide such notice will result in the continuation of coverage by the insurance company until the Division receives notification and may also result in imposition of penalties pursuant to Section 34A-2-205.

D. Reporting Injuries.

Work-related injuries of co-employees shall be reported in the name of the client company.

R612-400-3. Self Insurance of Workers' Compensation Obligations.

A. Purpose, Authority and Scope. 34A-2-201.5 of the Utah Workers' Compensation Act allows an employer or public agency insurance mutual to request authorization from the Division to self-insure workers' compensation obligations. Pursuant to the authority granted by Section 34A-2-201.5, this rule establishes procedures for applying for authorization to self-insure; it also establishes standards for Division decisions to grant, deny, or revoke such authorization and addresses the process for appealing Division decisions.

B. Definitions. In addition to the definitions found in Subsection 34A-2-201.5(1) and Section R612-100-2, the following definitions apply to this rule:

1. "Acceptable Credit Rating Agency" means Dun and Bradstreet or another similarly reputable credit rating agency acceptable to the Division.

2. "Aggregate Excess Insurance" is the amount of insurance required to cover the total accumulated workers' compensation benefits for all claims payable for a given period of time with the employer retaining an obligation for a designated amount as a deductible and insurance company paying all amounts due thereafter up to a maximum total obligation.

3. "Applicant" means an employer or public agency insurance mutual seeking initial authorization or renewal authorization to self-insure workers' compensation obligations.

4. "Reserve" is defined as the amount necessary to satisfy all debts, past, present, and future, incurred by reason of industrial accidents or occupational diseases, the origins of which commenced prior to the date of reserve determination.

5. "Self-Insured" means an employer or public agency insurance mutual that is authorized by the Division to self-insure workers' compensation obligations.

6. "Specific Excess Insurance" is defined as the amount of insurance required to satisfy workers' compensation obligations related to a workplace accident or disease with the employer retaining an obligation for a designated amount as a deductible and the insurance company assuming the obligation for all amounts due thereafter.

C. Application Process. An Applicant must complete the following process to receive Division authorization to self-insure.

1. The Applicant shall complete Division Form 109, "Application for Self Insurance" and submit the form to the Division, together with payment of the applicable fee as established by the Commission pursuant to Section 63J-1-504.

2. The Applicant shall demonstrate that it has been in business continuously for five years immediately preceding its application.

a. If the Applicant is a wholly-owned subsidiary of another company, it may satisfy this requirement by demonstrating that the parent company has been in business continuously for five years immediately preceding the application, provided that the parent company guarantees the Applicant's workers' compensation obligations. Unless this guarantee requirement is waived by the Division, the form and substance of any such guarantee is subject to Division approval.

b. If the Applicant has changed its business name, the applicant may satisfy this requirement by demonstrating that it has been in business under a combination of its current name and previous name continuously for five years immediately preceding the application.

c. If the Applicant has been formed by merger of two or more companies, the applicant may satisfy this requirement by demonstrating that it and at least one of its predecessor companies, when considered jointly, have been in business continuously for five years immediately preceding the application.

3. The Applicant shall demonstrate sufficient financial strength and liquidity to pay its workers' compensation obligations promptly and in full. The Applicant shall submit to the Division:

a. A current, certified financial statement or other proof acceptable to the Division of the Applicant's financial ability to pay direct compensation and other related expenses;

b. Proof that the Applicant is covered by specific aggregate excess insurance issued by a company authorized to transact such business in Utah and with policy limits and retention amounts acceptable to the Division. The insurance company shall execute Division Form 303, "Utah Bankruptcy and Insolvency Endorsement" for each covered self-insured entity and shall name the Uninsured Employers' Fund as an additional insured.

c. A surety bond issued by a corporate surety authorized to transact such business in this state or other acceptable security as approved by the Division. If a surety bond is submitted, it shall be issued on Division Form 213E, "Self-Insurance Aggregate Surety Bond" in an amount established by the Division based on its review of the applicant's past incurred losses, exposure, and contingency factors. The minimum bond shall be $100,000.

i. With Division approval, a surety bond provided under this subsection may be replaced with another surety bond, provided that a 60-day notice of termination of liability is given to the Division by the original surety, the replacement bond is issued on the prescribed form, and the new surety accepts the liability of the previous surety or a guarantee is filed by all sureties acknowledging their respective liabilities and periods of time covering such liabilities.

ii. The Division may waive surety bond requirements for a public entity.

4. The Division shall confirm through Dun and Bradstreet or other acceptable credit rating agency that the Applicant is within the agency's two highest composite credit appraisal ratings and two highest ratings of estimated financial strength.

a. An Applicant that is within the agency's two highest composite credit appraisal ratings but has received only a "fair" or equivalent composite credit rating may be granted authorization to self-insure by satisfying any additional security requirements required by the Division.

b. The Division may waive credit rating requirements for a public entity, provided that the public entity files financial statements or such other supplemental information as the Division finds necessary.

5. The Applicant shall demonstrate its ability to properly administer a self-insurance program.

a. The Applicant shall either procure the services of an insurance carrier or adjusting company to administer claims and establish reserves or demonstrate that the Applicant has sufficient competent staff to perform such tasks.

b. The Applicant or its adjusting company shall maintain within Utah a knowledgeable contact concerning claims and shall maintain a toll free number or accept a reasonable number of collect calls from injured employees.

c. The Applicant shall register with the Division a designated agent in Utah who is authorized to receive on behalf of the Applicant all notices or orders provided for under the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

d. At its discretion, the Division may train and test adjustors and administrators of self-insurance programs.

6. A subsidiary company may rely upon its parent company to satisfy any of the requirements of subsection C of this rule, provided that the parent company guarantees all the subsidiary company's workers' compensation liabilities. The form and substance of such guarantees must be approved by the Division.

D. Division Action to Grant or Deny Authorization to Self-Insure.

1. If the Division determines that the Applicant has satisfactorily completed the application process required by subsection C, the Division shall issue written authorization for the applicant to self-insure. Such authorization shall be effective for one year from issuance and may be renewed annually as set forth in subsection E of this rule.

2. If the Division determines that the Applicant has not satisfied the requirement of subsection C, the Division will issue a written notice denying the Applicant's request to self-insure. The notice of denial shall state the basis for denial, advise the Applicant of any actions necessary to correct deficiencies in its application, and set forth the Applicant's right to appeal the denial.

E. Renewal of Authorization to Self-Insure.

1. Annual Renewal Application. To request annual renewal of authority to self-insure, a self-insured shall complete and submit Division Form 223E, "Renewal Application for Self Insurance" together with payment of the applicable fee as established by the Commission pursuant to Section 63J-1-504.

a. The completed "Renewal Application" and applicable fee must be submitted at least 60 days before the expiration of the previous self-insurance authorization. Late filing of a renewal application may result in suspension or cancellation of self-insurance privileges.

b. Renewal applicants must satisfy all requirements set forth in subsection C of this rule, except that renewal applicants whose financial information cannot be obtained from Dun and Bradstreet will be required to file financial statements or such other supplemental information as the Division finds necessary.

2. If the Division determines that the renewal applicant qualifies for renewal of authorization to self-insure, the Division shall issue a written renewal. Such renewal shall be effective for one year from issuance.

3. If the Division determines that the renewal applicant has not satisfied the requirements of this rule, the Division will issue a written denial of the request to renew, stating the specific basis for denial, advising the applicant of any actions necessary to correct deficiencies in its renewal application, and the applicant's right to appeal the denial.

F. Revocation of Authority to Self-Insure.

1. In cases where a self-insured entity merges with another entity, the existing authorization to self-insure will be revoked and the newly formed entity must apply for authority to self-insure in its own right.

2. If the Division receives complaints regarding a self-insured's practices or ability to satisfy its obligations, has other reason to believe that a self-insured no longer meets the standards for self-insurance set forth in this rule, or has failed to meet other requirements imposed by law upon self-insureds, the Division shall provide written notice to the self-insured and provide the self-insured a reasonable opportunity to respond.

a. If, after reviewing the self-insured's response, the Division remains of the opinion that the self-insured no longer meets the standards for self-insurance, the Division shall commence informal adjudicative proceedings to revoke the self-insured's authority to self-insure.

b. At the conclusion of such proceedings, the Division shall issue either:

i. written confirmation of the self-insured's continuing authority to self-insure; or

ii. written revocation of authority to self-insure, stating the specific basis for revocation, the self-insured's appeal rights, and the self-insured's right to continue its self insured status by providing additional security pursuant to subsection F of this rule.

c. Within 60 days of notice of revocation, a self-insured whose self-insurance privileges are revoked shall obtain security for their reserve requirements under the two step process set forth in subsection G.1 and 2 of this rule.

G. Continuation of Self-Insurance Authorization by Providing Additional Security.

1. A self-insured that falls below the standards required by subsection C.4 of this rule may, at the discretion of the Division, be allowed to continue self-insurance privileges if the following steps are taken:

a. An independent actuarial study, at the self-insured's expense and satisfactory to the Division, establishes the self-insured's reserve requirements.

b. The self-insured provides acceptable security to the Division for such reserve requirements.

2. Self-insured which retain their self-insurance authorization by complying with the requirements of subsection F.1 and 2 are subject to quarterly financial reviews by the Division

H. Appeals.

An entity dissatisfied with a Division decision to deny or revoke self-insured status may contest the decision by filing an Application For Hearing with the Commission's Adjudication Division pursuant to 34A-302(1) of the Utah Labor Commission Act and complying with the rules and procedures of the Adjudication Division.

R612-400-4. Waivers.

A. Authority and Purpose.

Pursuant to Title 34A, Chapter Two, Part Ten, Workers' Compensation Coverage Waivers Act ("the Act"), this rule establishes procedures for applying for workers' compensation coverage waivers. The rule also addresses the effect of coverage waivers and procedures to be followed by the Labor Commission's Industrial Accidents Division in granting, denying, or revoking coverage waivers.

B. Procedure for Application, Issuance and Renewal of Coverage Waiver.

1. A business entity may obtain a coverage waiver by:

a. completing the application process, available either online at the Utah Labor Commission website or by written application also available at the Commission;

b. submitting the supporting documents required by 34A-2-1004 of the Act; and

c. paying a non-refundable application fee of $50, used to defray the costs of processing and evaluating the application. Payment of the fee by check may delay issuance of a coverage waiver until the check has been honored.

2. If the Division determines that a business entity has satisfied each requirement for a coverage waiver, the Division will issue the coverage waiver. If the Division determines that a business entity has not satisfied each requirement for a workers' compensation insurance waiver, the Division will issue a written denial to the business entity, stating the basis for denial and setting forth the business entity's appeal rights.

3. Subject to revocation of a coverage waiver as provided by subsection C. of this section, a coverage waiver remains in effect for the following time periods:

a. A coverage waiver issued by a licensed workers' compensation insurance company prior to July 1, 2011, the effective date of the Act, shall remain effective for the period shown on the coverage waiver.

b. A coverage waiver issued by the Division after July 1, 2011, shall be effective for one year from the date the coverage waiver is issued.

4. A business entity may renew a coverage waiver by completing the on-line renewal application available at the Utah Labor Commission website and satisfying the requirements set forth in subsection B.1.b. and c. of this rule.

C. Revocation.

1. If the Division has reason to believe that a business entity no longer qualifies for a coverage waiver, the Division shall institute proceedings to determine whether the business entity's coverage waiver should be revoked. Such proceedings shall be conducted as informal proceedings under the Utah Administrative Procedures Act.

2. If the Division concludes that the business entity does not satisfy each requirement for a coverage waiver, the Division will issue a written order revoking the waiver certificate. The order shall state the basis for revocation and the business entity's appeal rights. The Division may also initiate other proceedings authorized by the Utah Workers' Compensation Act to compel the business entity to obtain workers' compensation coverage for its employees.

D. Appeal Rights.

A business entity may challenge a Division decision to deny or revoke a coverage waiver by filing an appeal of the decision with the Adjudication Division. Such appeal proceedings shall be conducted as de novo formal adjudicatory proceedings under the Utah Administrative Procedures Act.

E. Effect, Verification and Limitation of Coverage Waiver.

1. Effect of coverage waiver. Subsection 34A-2-103 (7) (c) permits an employer contracting with a business entity to rely upon a valid coverage waiver issued by the Division as proof that the business entity is not required to have a workers' compensation insurance policy.

2. Verification of coverage waiver. Before an employer may rely upon a business entity's coverage waiver, the employer shall retain the following documents:

a. A photocopy of the coverage waiver issued to the business entity by the Division; and

b. A printout of the Division's waiver status verification web page showing that the business entity's coverage waiver

had not been revoked as of the date on which the employer contracted with the business entity.

3. Limitations to effect of coverage waiver. A coverage waiver does not excuse a business entity from obtaining and maintaining workers' compensation insurance coverage for employees who are entitled to such coverage under the Utah Workers' Compensation Act. If and when a business entity has such employees, any coverage waiver previously issued to that business entity becomes void and the business entity must immediately obtain workers' compensation coverage.

R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 2018, as established by the Labor Commission, shall be:

1. 0.25% for the Uninsured Employers' Fund;

2. 3.0% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, insurance, rates, waivers
December 27, 2017 59-9-101(2)

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Utah Occupational Safety and Health Division, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Utah Occupational Safety and Health Division of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of the Utah Occupational Safety and Health Division, incorporating by reference applicable federal standards from 29 CFR 1904, 1908, 1910 and 1926, and the Utah initiated occupational safety and health standards found in Utah Administrative Code R614-1 through R614-7.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administrator" means the director of the Division.

D. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

E. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

F. "Commission" means the Utah Labor Commission.

G. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of any time frame shall be included. If the last day of any time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

H. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

I. "Division" means the Utah Occupational Safety and Health Division (UOSH) within the Commission.

J. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

K. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

L. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

M. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

N. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

O. "Exposure" or "exposed" means that an employee is

subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

P. "Hearing" means a proceeding conducted by the commission.

Q. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

R. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

S. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

T. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

U. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

V. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

W. "Safety and Health Officer" means a person authorized by the Division to conduct inspections.

X. "Secretary" means the Secretary of the United States Department of Labor.

Y. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

Z. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

AA. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-1-12B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

BB. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

CC. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. The following federal occupational safety and health standards are hereby incorporated:

1. 29 CFR 1904, July 1, 2015, is incorporated by reference, except the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in Utah Code Ann. Subsection 34A-6-301(3)(b)(2) and the Utah Administrative Code R614-1-5(C)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. 29 CFR 1910.6 and 1910.21 through the end part of 1910, July 1, 2017, are incorporated by reference, except 29 CFR 1910.1024 and 29 CFR 1910.1053.

4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2017, edition are incorporated by reference, except 29 CFR 1926.1124 and 29 CFR 1926.1153.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;
2. Remodeling, alteration and repair;
3. Decorating and painting;
4. Demolition; and
5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system

for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)

(2) Doctor

(3) Hospital

(4) Ambulance

(5) Fire Department

(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection,

citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health

Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of

individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of

service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not

subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

U. Multi-Employer worksites.

1. Pursuant to Section 34A-6-201 of the Act, violation of an applicable standard adopted under Section 34A-6-202 of the Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

a. It meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this Rule for a creating employer: or

b. It meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer.

c. Even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard.

4. Exposing Employer. An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

c. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if:

i. It failed to make a good faith effort to ask the creating and/or controlling employer to correct the hazard;

ii. It failed to inform its employees of the hazard; and

iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. Correcting Employer. A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

6. Controlling Employer. A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include, but are not limited to:

i. The nature of the worksite and industry in which the work is being performed;

ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

iv. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees, a graduated system of discipline for non-compliant employees and/or employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

v. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by this Rule.

c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered;

i. Whether the controlling employer conducted worksite inspections with sufficient frequency as contemplated by subsection 6(b);

ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this Rule;

iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

7. In accordance with Section 34A-6-110, nothing in this Rule shall:

a. be deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

b. be construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-

manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA

inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63G, Chapter 4, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which

adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63G, Chapter 3, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a

representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3.

through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally

identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and

health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
December 27, 2017 **34A-6**
Notice of Continuation October 19, 2017

R704. Public Safety, Emergency Management.
R704-2. Statewide Mutual Aid Act Activation.
R704-2-1. Purpose.

The purpose of this rule is to provide procedures for jurisdictions activating the Statewide Mutual Aid Act (SMAA) and for persons acting as agents of the state to use in mobilizing or demobilizing available assets in response to an intrastate or interstate disaster as provided in Title 53, Chapter 2a, Part 4, Emergency Management Assistance Compact.

R704-2-2. Authority.

This rule is authorized by Section 53-2a-104.

R704-2-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-2a-102, 53-2a-203, and 53-2a-302.

(2) In addition:

(a) "agent of the state" means any person designated to represent the state;

(b) "authorized representative" means an officer or employee from a participating jurisdiction empowered to request, offer, or provide assistance on behalf of the chief executive officer;

(c) "committee" means the Statewide Mutual Aid Committee;

(d) "division" means the Utah Division of Emergency Management;

(e) "EMAC" means Emergency Management Assistance Compact, Utah Code Ann. 53-2a-402;

(f) "EMAC coordinator" means a designated division representative functioning as the coordinator of all Emergency Management Assistance Compact activities and actions between the states;

(g) "emergency manager" means a person designated by a jurisdiction to oversee preparedness, emergency or disaster response, mitigation, and recovery for its community;

(h) "Form 101," SMAA Mission Request Form, is a required document used to request resources;

(i) "Form 102A," Agent of the State of Utah - EMAC Agreement, is a required document that outlines liability, benefits, and financial responsibilities when deploying resources to another state;

(j) "Form 102B," Agent of the State of Utah - SMAA Agreement, is a required document that outlines liability, benefits, and financial responsibilities associated with serving as an agent of the state;

(k) "Form 103," SMAA Pre-deployment Checklist for Personnel, is an optional document that lists preparation steps for deployment;

(l) "Form 104," SMAA Mobilization Sheet, is an optional document that outlines the steps and processes involved with deployment;

(m) "Form 105," SMAA Personnel Location, is an optional tracking tool for deployed personnel who are serving an SMAA mission assignment;

(n) "Form 106," SMAA Resource Availability Log, is an optional log that identifies available resources offered by supporting agencies in response to an event;

(o) "Form 107," SMAA Resource Tracking Form, is an optional tracking tool for resources being utilized under an SMAA mission;

(p) "Form 108," SMAA Personnel Demobilization Schedule, is a required tracking tool for personnel being released from their assigned mission duties;

(q) "Form 109," SMAA Demobilization/Return of Assets Guidelines, provides guidelines for the responding jurisdictions to use when tracking assets used in an incident or event;

(r) "Form 110," SMAA Intergovernmental Reimbursement Form, is a required form that a jurisdiction uses to request reimbursement from the requesting jurisdiction;

(s) "Form 111," SMAA After Action/Corrective Action Report Survey, is a form that summarizes and analyzes performance in both exercise and actual events for those who act as an agent of the state. It may also evaluate achievement of the selected exercise objectives and demonstration of the overall capabilities being exercised;

(t) "Form 112," SMAA Demobilization Checklist, is an optional document that outlines the steps to follow in preparing to depart;

(u) "Form 113," SMAA Activation Agreement, is a required document that shows a jurisdiction's intent to activate the SMAA;

(v) "Form 114," SMAA Checklist for Requesting Reimbursement, is a list of the required steps to request reimbursement after the mission is complete;

(w) "Form 115," Resource Expense Summary, is a required document used to track expenditures while an agent of the state;

(x) "ICS Form 209," Incident Status Summary, is a form used for reporting information on significant incidents that requires inter-agency or intra-agency resource coordination;

(y) "ICS Form 221," Demobilization Checklist, is a FEMA form for tracking resources as they are released from deployment and return to their responding jurisdiction;

(z) "jurisdiction" means a participating political subdivision as defined in subsection 53-2a-302(2);

(aa) "local to local" means assistance between jurisdictions that do not utilize coordination from the state;

(bb) "mission number" means an assigned number that identifies a mission;

(cc) "SMAA" means Statewide Mutual Aid Act, Utah Code Ann. 53-2a-301 through 310;

(dd) "SMAA coordinator" means a designated division representative functioning as the coordinator of Statewide Mutual Aid Act activities and actions between the participating jurisdictions when requesting assistance of the State;

(ee) "state EOC" means the State of Utah Emergency Operations Center facility operated by the division which assists state agencies and jurisdictions in coordinating information and resources when local emergency response and recovery resources require supplementation; and

(ff) "state EOC manager" means a person designated to manage the State Emergency Operation Center.

R704-2-4. Requests for Disaster Assistance in a State of Emergency.

(1) When seeking to utilize the statewide mutual aid system for an emergency or disaster event, the chief executive officer or emergency manager of the requesting jurisdiction shall contact the division director or designee after they have made a written or oral declaration of emergency pursuant to Sections 53-2a-206 or 53-2a-208.

(a) The chief executive officer or designee of the requesting jurisdiction shall submit Form 101 to the responding jurisdiction within 24 hours of seeking assistance from the system for state resources or to receive assistance coordinating local to local assistance.

(2) Upon request by the requesting jurisdiction for state assistance, the SMAA coordinator or state EOC manager shall coordinate services and resources for the emergency or disaster event and shall:

(a) assign a mission number;

(b) document information; and

(c) seek needed equipment and personnel from a participating jurisdiction.

(3) Once a responding jurisdiction that is available to render aid has been identified, the participating jurisdictions shall complete and sign Form 113.

(a) In urgent circumstances, the requesting jurisdiction and the responding jurisdiction may initially enter into a verbal agreement, but the agreement shall be memorialized in writing and signed by both jurisdictions no later than 48 hours after the verbal agreement.

(b) If unanticipated circumstances arise during the emergency or disaster event, the requesting and responding jurisdictions may amend or supplement Form 101.

(c) Any amendments or supplements to Form 101 shall be acknowledged by the participating jurisdictions with authorizing signatures.

R704-2-5. Agent of the State.

(1) At the request of the division, a jurisdiction may agree to provide an employee with the skills and expertise desired to be deployed as an agent of the state for the purpose of rendering intrastate or interstate aid.

(a) The governing authority of the employee serving as an agent of the state shall submit to the division either Form 102A or Form 102B in response to an intrastate or interstate emergency or disaster.

(b) The responding jurisdiction's employee shall remain an employee of the responding jurisdiction except that the supervision of his or her duties during the period of assignment may be governed by agreement between the responding jurisdiction and the requesting jurisdiction and shall be entitled to the same salary and benefits to which they would otherwise be entitled to from the responding jurisdiction.

(c) The division assumes no responsibility for the responding jurisdiction's employee other than the coordination of their travel arrangements and lodging and per diem expenses, except in exigent circumstances.

(d) Upon completion of a mission, the agent of the state shall submit a brief summary of the services provided by the responding jurisdiction, Form 110, and Form 115 to the division. The division shall then reimburse the responding jurisdiction for the eligible expenses stated in subsection (c) incurred by the agent of the state.

R704-2-6. Procedures for Providing Mutual Aid.

(1) When providing assistance pursuant to the SMAA, the requesting jurisdiction shall control and supervise the personnel, equipment, and resources of any responding jurisdiction.

(a) The requesting jurisdiction shall advise supervisory personnel of the responding jurisdiction concerning assignments or mission tasks.

(b) While providing mutual aid, the incident commander or requesting jurisdiction shall:

(i) maintain daily personnel time records, material records, and a log of equipment hours;

(ii) oversee the operation, control, and maintenance of the equipment and other resources furnished by the responding jurisdiction; and

(iii) report work progress to the responding jurisdiction.

(c) The responding jurisdiction shall notify the requesting jurisdiction if the requested resources are donated or loaned.

(d) The responding jurisdiction may recall its personnel subject to providing a minimum of 24 hours advance notice of intent to withdraw personnel or resources from the requesting jurisdiction, unless circumstances make 24 hours advance notice impracticable or unreasonable.

(2) The responding jurisdiction may release personnel or resources for SMAA assistance after it has determined that its remaining resources are adequate to support its own normal operations.

(a) The requesting jurisdiction shall be responsible for providing food and housing for the personnel from the responding jurisdiction, beginning with the time of arrival at the designated location and until departure, unless otherwise indicated in Form 101.

(b) The requesting jurisdiction may request personnel who are self-sustaining, but must specify what resources it is able to provide to the responding jurisdiction.

(3) The requesting jurisdiction is responsible for coordinating communication between its own personnel and the personnel of the responding jurisdiction.

(a) The responding jurisdiction shall furnish equipment to communicate among its respective operating units.

(4) Each participating jurisdiction shall maintain its own equipment in safe and operational condition.

(5) The division shall receive and maintain an inventory of the state and local services, equipment, supplies, personnel, and other resources related to participation in the SMAA.

R704-2-7. Pre-Mobilization of Resources.

(1) The requesting jurisdiction shall submit Form 101 to the responding jurisdiction to be kept as documentation. The required information includes:

(a) type of resources requested; and

(b) quantity of resources requested.

(2) The responding jurisdiction shall confirm the following incident information:

(a) name of incident;

(b) location of incident;

(c) date and time the incident was declared; and

(d) current time of deployment of resources requested.

(3) The SMAA coordinator or EOC manager shall provide the following to a responding employee acting as an agent of the state:

(a) situation briefing;

(b) pre-deployment checklist; and

(c) travel information.

(4) A requesting jurisdiction shall first use local agency resources prior to requesting resources through SMAA.

(5) The requesting jurisdiction shall specify a location for a staging area and assign a person to ensure the resources are ready to be released.

(a) If the requested resources are for equipment, the responding jurisdiction shall confirm its readiness to be deployed.

(6) The responding jurisdiction shall perform a communications check with all assigned communications equipment, prior to departure, to ensure compatibility with the requesting jurisdiction.

R704-2-8. Mobilization of Resources.

(1) Deployed personnel and resources from a responding jurisdiction shall notify the point of contact for both the requesting jurisdiction and the responding jurisdiction of their arrival at the point of assignment or staging area.

(2) The requesting jurisdiction shall notify the responding jurisdiction if there is a change in assignments or locations for the requested resources.

(3) The division shall use Form 104 for each deployment of resources if state assistance was requested.

(4) Deployed personnel may be tracked by using Form 105.

(a) Deployed resources and available resources may also be tracked for the SMAA through Forms 106 and 107.

(5) The requesting jurisdiction shall provide a mission briefing to the deployed personnel from the responding

jurisdiction.

R704-2-9. Demobilization of Resources.

(1) The requesting jurisdiction will be responsible for demobilization.

(a) After termination of the mission time, the requesting jurisdiction shall release resources and return those resources to the responding jurisdiction according to the terms of Form 104, unless the circumstances of the incident make compliance with the terms impracticable or impossible.

(b) The requesting jurisdiction shall debrief all personnel assigned to the incident prior to departure. The debriefing shall include:

(i) confirmation of personnel's travel arrangements; and

(ii) review of personnel's responsibilities for demobilization.

(2) Equipment issued to personnel from a responding jurisdiction shall be returned, and all documentation shall be completed and submitted as required in Form 109.

(3) Personnel from the responding jurisdiction shall notify the requesting jurisdiction of the safe arrival of the deployed resources upon returning to their home jurisdiction.

(4) The responding jurisdiction's returning personnel shall complete and submit Form 111 to the division for all SMAA deployments if acting as an agent of the state.

R704-2-10. Reimbursement Procedures for Rendering Mutual Aid.

(1) A responding jurisdiction that seeks reimbursement shall provide notice to the requesting jurisdiction within 30 days of the termination of statewide mutual aid assistance.

(a) The notice of intent should include the following:

(i) Form 110;

(ii) a brief summary of the services provided by the responding jurisdiction; and

(iii) contact information for the designated person or financial representative responsible for the request.

(b) The responding jurisdiction shall reference the assigned mission number when seeking reimbursement from a requesting jurisdiction.

(c) In addition to the notice of intent to seek reimbursement, the responding jurisdiction shall provide the requesting jurisdiction and the SMAA coordinator, if the state was involved, with a copy of all documents related to deployment and reimbursement, including:

(i) Form 101 and any amendments or supplements;

(ii) Form 110;

(iii) Form 113;

(iv) Form 115;

(v) any notices of dispute; and

(vi) any payments made by the requesting jurisdiction in response to the responding jurisdiction's request.

(2) The requesting jurisdiction shall acknowledge receipt, in writing, of the notice of intent to seek reimbursement from the responding jurisdiction.

(3) The SMAA coordinator shall record all documents related to deployment and reimbursement from the requesting jurisdiction personnel acting as an agent of the state.

(a) The SMAA coordinator shall coordinate with both jurisdictions to encourage and facilitate proper reimbursement, if needed.

(b) The SMAA coordinator may provide reminder notices in anticipation of due dates including the notifications required under Subsections (3) and (4).

(c) The division may designate a financial representative to monitor and provide guidance to participating jurisdictions concerning reimbursement.

(4) When the notification requirements of Subsection (3) have been met, the responding jurisdiction may submit a request for reimbursement to the requesting jurisdiction within 60 days of the termination of statewide mutual aid assistance.

(a) The request for reimbursement shall include a cover letter that summarizes the assistance provided under Form 101.

(b) The request for reimbursement shall also include the following:

(i) a comprehensive invoice listing resources provided with the total cost;

(ii) Form 110;

(iii) Form 115; and

(iv) supporting documentation including copies of individual invoices, travel claims, vouchers, and other similar items.

(c) The request for reimbursement shall also include a copy of any amendments or supplements to the original Form 101 and accompanied by the itemized costs and respective supporting documents.

(5) The requesting jurisdiction shall reimburse the responding jurisdiction no later than 30 days from the date of receiving the request under Subsection (4) unless:

(a) either jurisdiction provides written notice to the other jurisdiction that disputes the reimbursement costs, or alleges noncompliance with the applicable procedures and criteria; or

(b) the jurisdictions agree to an extension for reimbursement.

(6) Disputes regarding reimbursement shall first be addressed between the responding jurisdictions and requesting jurisdiction within 30 days after either party provides notice of the dispute.

(a) The jurisdictions shall make a reasonable effort to resolve the dispute during the 30 day period.

(7) If a dispute cannot be resolved by the jurisdictions within 90 days after the notice of dispute, either party may submit the dispute to the committee.

(a) Requests to the committee must be made no later than 30 days after the end of 90-day period described in Subsection (7).

(b) The requesting jurisdiction shall submit the following documents to the committee for review:

(i) Form 110;

(ii) a concise narrative explaining the dispute; and

(iii) the documents listed in Subsections (4)(a) through (c).

(c) The requesting and responding jurisdictions may submit other supporting evidence that is relevant to the dispute.

(d) The committee has 30 days to schedule the matter for a hearing.

(e) The committee chairperson shall select a quorum of seven committee members to participate in the hearing.

(f) Hearings are designated as informal adjudications pursuant to Utah Code Ann. Section 63G-4-202.

(g) The committee, by majority vote, shall issue a final written decision within 30 days of the hearing that includes findings of fact and its reasons for its decision.

R704-2-11. Waiver of Reimbursement.

(1) A responding jurisdiction may waive, in writing, any rights to reimbursement under Section 53-2a-308.

(2) Waiver of any reimbursable right shall specify each item waived in order to provide notice to the requesting jurisdiction and the division, if applicable.

(3) Waiver of any reimbursable right shall be delivered to the requesting jurisdiction with a copy delivered to the division, if applicable, no later than 90 days after the termination of statewide mutual aid assistance.

R704-2-12. Reimbursable Expenses.

(1) The requesting jurisdiction shall reimburse the responding jurisdiction for costs related to deployment pursuant to Form 101.

(a) In order to be eligible for reimbursement, all costs must be documented and sufficiently detailed in Form 101 and include supporting documentation.

(b) A jurisdiction that fails to submit all required reimbursement forms by due dates listed in this rule forfeits its right to reimbursement.

(2) Unless otherwise specified in Form 101, the responding jurisdiction shall continue to compensate its personnel according to its employment policies at the time of the event.

(a) The requesting jurisdiction shall reimburse the responding jurisdiction for agreed upon costs and expenses incurred during the event.

(3) The requesting jurisdiction shall reimburse the responding jurisdiction for use, damage, or loss of any equipment that the responding jurisdiction provided during the event, exercise, or drill.

(a) If practicable and at the request of the responding jurisdiction, the requesting jurisdiction may provide fuels, miscellaneous supplies, and minor repairs.

(4) Unless damage is caused by gross negligence, bad faith, or willful misconduct by the responding jurisdiction, the requesting jurisdiction shall reimburse the responding jurisdiction for all materials and supplies exhausted or damaged during the event.

(a) The parties may agree that the requesting jurisdiction may replace equipment, materials, and supplies with like, kind, and quality as determined by the responding jurisdiction.

KEY: Statewide Mutual Aid Act, reimbursement
June 9, 2017 53-2a-104(3)
Notice of Continuation December 19, 2017

R710. Public Safety, Fire Marshal.
R710-14. Food Truck Licensing and Regulation.
R710-14-1. Purpose.

The purpose of this rule is to establish criteria for the fire safety inspection of a food truck.

R710-14-2. Authority.

This rule is authorized by Subsections 53-7-204(1)(b)(x) and 11-56-104(4)(a).

R710-14-3. Definitions.

(1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority;

(2) "board" means Utah Fire Prevention Board;

(3) "certified inspector" means a person who meets the qualifications listed in this Rule to conduct food truck fire safety inspections;

(4) "inspection" means a fire safety inspection of a food truck; "food truck" means the definition found in Section 11-56-102(3);

(5) "food truck operator" means the definition found in Section11-56-102(5);

(6) "LPG" means liquefied petroleum gas; and

(7) "SFM" means State Fire Marshal or authorized deputy.

R710-14-4. Certified Inspector Qualifications.

(1) Only a certified inspector may conduct an inspection.

(2) A certified inspector shall be affiliated with a AHJ as an employee.

(3) A certified inspector shall hold a current Utah State Inspector 1 certificate and complete the food truck fire safety inspection training approved by the SFM.

R710-14-5. Inspection Procedures and Criteria.

(1) The AHJ shall use the inspection check list approved by the Board.

(2) A food truck shall comply with the following standards to pass inspection:

(a) no patrons are allowed inside the food truck;

(b) patron seating may not be located within any food truck or mobile or temporary cooking vehicle;

(c) gas fired appliances shall be secured to the food truck;

(d) generators may be used according to their listing and are not required to be mounted on the food truck; and

(e) a listed LPG liquid petroleum gas detector shall be installed in the truck at floor level near the cooking equipment.

(3) The AHJ may re-inspect a food truck, after it has passed an inspection, for the following items:

(a) damage to truck or equipment;

(b) removal or replacement of appliances or other equipment;

(c) additions to the food truck that were not included in the original inspection;

(d) remodel of the food truck;

(e) issues not included in the original inspection such as:

(i) free standing LPG tanks;

(ii) generator location;

(iii) cooking outside;

(iv) exterior seating; or

(v) truck placement;

(f) parking and location;

(g) cleanliness issues that create a potential fire hazard such as an accumulation of grease;

(h) imminent hazards to life or property; or

(i) current tag on fire extinguishing system.

(4) If a food truck passes an inspection, the AHJ will provide the food truck operator with a fire safety inspection sticker.

R710-14-6. Inspection Stickers.

(1) The SFM will provide inspection stickers to an AHJ. No other stickers may be used to indicate approval.

(2) The food truck operator shall place the inspection sticker inside the rear most door of the food truck.

(3) The inspection sticker is valid for one year from the date of the inspection.

R710-14-7. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

KEY: fire prevention, food trucks
December 28, 2017 **53-7-204**
11-56-104(4)(a)

R714. Public Safety, Highway Patrol.
R714-510. 24-7 Sobriety Program.
R714-510-1. Authority.

This rule is authorized by Subsection 41-6a-515.5(7).

R714-510-2. Purpose.

The purpose of this rule is to establish criteria and procedures for a law enforcement agency to participate in a 24-7 sobriety program.

R714-510-3. Definitions.

(1) Definitions used in the rule are found in Sections 41-6a-102, and 41-6a-515.5.

(2) In addition:

(a) "24-7 Sobriety Program Committee" or "committee" means a committee comprised of members from the Department of Public Safety, the Department of Technology Services, the Administrative Office of the Courts, and the participating law enforcement agency for the purpose of establishing criteria and procedures for a 24-7 sobriety program.

R714-510-4. Manner of Testing.

(1) An individual participating in a 24-7 program for in person alcohol testing shall:

(a) appear at the designated law enforcement agency or testing site twice a day, both between the hours of 6-8 am and 6-8 pm;

(b) submit to a portable breath test; and

(i) if the portable breath test result indicates alcohol consumption, submit to an Intoxilyzer test for a confirmation result; and

(c) pay the required testing fee for each test administered.

(2) An individual participating in a 24-7 program for drug testing shall:

(a) appear at the designated law enforcement agency or testing site on a random basis as requested;

(b) submit to required drug testing; and

(c) pay the required testing fee for each test administered.

(3) An individual may be ordered to participate in a 24-7 program through the use of transdermal alcohol monitoring if:

(a) the individual has completed a screening for risk assessment and is determined to be a low risk offender; or

(b) the judge hearing the case has determined that the individual qualifies for a hardship exception based on criteria outlined in Subsection 41-6a-515.5(3)(e).

R714-510-5. Apparatus to be Used for Testing.

(1) The following apparatus are acceptable for use in a 24-7 sobriety program;

(a) portable breath test;
(b) Intoxilyzer test;
(c) urine test;
(d) oral fluid test; and
(e) blood test.

R714-510-6. Participation and Testing Fees.

(1) A law enforcement agency that participates in a 24-7 sobriety program may require payment of a testing fee by a person participating in the program as follows:

(a) $30.00 user fee for enrollment in the 24-7 sobriety program;

(b) $2.00 for each portable breath test or Intoxilyzer test administered;

(c) $6.00 for each urine or oral fluid drug test administered; and

(d) $7.55 per day for the use of transdermal alcohol monitoring;

R714-510-7. Data Management Technology Plan.

(1) A law enforcement agency that participates in a 24-7 sobriety program must use a data management technology plan approved by the department to manage the following:

(a) testing;
(b) data access;
(c) fees;
(d) fee payments; and
(e) any required reports.

R714-510-8. Sanction Schedule for Program Noncompliance.

(1) A person who tests positive for alcohol or drugs under a 24-7 sobriety program may be subject to the following:

(a) jail commitment of 8 hours for the first occurrence;

(b) jail commitment of 16 hours for the second occurrence;

(c) jail commitment of 24 hour for the third occurrence;

(d) appear before judge, may be removed from program for the fourth occurrence.

(1) A person who fails to appear for a required test may be subject to the following:

(a) jail commitment of 12 hours for the first occurrence;

(b) jail commitment of 24 hours for the second occurrence;

(c) jail commitment of 48 hour for the third occurrence;

(d) appear before judge, may be removed from program for the fourth occurrence.

R714-510-9. Process for Piloting Alternate Components of the 24-7 Sobriety Program.

(1) The 24-7 Sobriety Program Committee may evaluate and pilot alternate components of the 24-7 sobriety program.

(2) Upon evaluation and determination of the committee that an alternate component of the 24-7 Sobriety Program is deemed effective, the committee may incorporate the alternate component into the 24-7 Sobriety Program.

KEY: 24-7 Sobriety Program, sobriety testing
December 28, 2017 41-6a-515.5

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-320. Undercover Identification.
R722-320-1. Purpose.

The purpose of this rule is to establish a program whereby the Department of Public Safety can assist federal, state, county, and local law enforcement agencies in concealing the true identity of undercover peace officers.

R722-320-2. Authority.

This rule is authorized by Subsections 53-10-104(1), 53-10-104(9), and 53-10-104(14).

R722-320-3. Definitions.

(1) "Chief administrative officer" means the commissioner of public safety, a chief of police or sheriff of any municipality or county of this state, or the agent in charge of operations in this state for any federal law enforcement agency.

(2) "Peace officer" means anyone employed in one of the four peace officer classifications in Section 53-13-102.

(3) "Undercover identification" means identification issued to a peace officer which allows the true identity of the officer to be concealed from criminal suspects and their associates.

(4) "Undercover investigation" means a criminal investigation conducted by a peace officer which is authorized by the officer's agency and where the true identity of the officer must be concealed from criminal suspects and their associates.

R722-320-4. Type of Assistance Provided.

The department will assist federal, state, county, and local law enforcement agencies in obtaining identification and personal history information for their peace officers who conduct undercover investigations.

R722-320-5. Issuance of Undercover Identification.

(1) The department may issue an undercover identification after receiving a written request from the chief administrative officer of a law enforcement agency. This request must be on official agency letterhead and shall include:

(a) the reason the undercover identification is needed;

(b) the real name and date of birth of the officer needing undercover identification;

(c) the undercover name, date of birth, social security number, and address to be used by the officer; and,

(d) the original signature of the chief administrative officer.

(2) Each request may be for one officer only. Multiple requests in the same letter will not be honored.

(3) Processing a request for undercover identification is time consuming for the department. Therefore, for the convenience of all parties, the officer intending to apply for undercover identification must call the department's Bureau of Criminal Identification (BCI) at (801) 965-4544 and make an appointment prior to coming in to apply for undercover identification.

(4) At the time of issuance the officer must:

(a) present to BCI (3888 West 5400 South, Salt Lake City, Utah) the original letter of request from the chief administrative officer;

(b) provide a copy of valid identification issued by the officer's agency indicating that he/she is a peace officer; and,

(c) complete the application form provided by the department.

(5) The department may issue an undercover identification if the requirements of this rule are met and the department believes that such issuance is in the best interests of law enforcement.

R722-320-6. Expiration of Undercover Identification.

(1) Undercover identification issued pursuant to this rule:

(a) shall automatically expire six months after it is issued;

(b) must be returned to the department by the officer's agency within 30 days in the case of an officer who is reassigned to a position no longer requiring the use of undercover identification; and

(c) must immediately be returned to the department by the officer's agency in the case of an officer who terminates employment with the agency.

(2) No officer may be issued undercover identification if any undercover identification previously issued to another officer of the same agency is not accounted for to the satisfaction of the department.

(3) A chief administrative officer may request that an undercover identification issued to an officer of his/her agency be extended beyond the six month expiration referred to in this section if:

(a) a written request for extension signed by the chief administrative officer is received by the department prior to the expiration date; and

(b) the written request demonstrates to the satisfaction of the department extenuating circumstances justifying the extension.

R722-320-7. Revocation of Undercover Identification.

The department may revoke an undercover identification:

(1) if the undercover identification was used for a purpose not related to an active undercover investigation;

(2) if the officer has been charged with a crime or is under investigation for any wrong doing that would compromise the undercover identification program or not be in the best interests of law enforcement; or

(3) for any violation of this rule.

R722-320-8. Surrender of Undercover Identification.

A peace officer whose undercover identification has expired or which has been revoked shall immediately surrender his/her undercover identification to the department.

R722-320-9. Appeal.

(1) In accordance with Subsection 63G-4-202(1) the department hereby designates all adjudicative proceedings associated with this rule as informal adjudicative proceedings.

(2) An officer (appellant) whose request for undercover identification has been denied or whose undercover identification has been revoked, may appeal such denial or revocation to the department's administrative law judge (ALJ). The appeal must be filed on a form provided by the department. The appeal shall be considered a request for agency action in accordance with Subsection 63G-4-201(1)(b).

(a) The appeal must be filed within thirty days after the appellant receives notice of the denial or revocation.

(b) The appellant will not receive a hearing on the appeal. The ALJ will review the appeal and issue a written decision on it in compliance with Subsection 63G-4-203(1)(i) within ten days after receiving it.

(3) An appellant who is dissatisfied with the ALJ's decision may file a request for reconsideration with the ALJ within ten days after receipt of the decision. If the ALJ does not issue an order within twenty days after receiving the request for reconsideration, the request for reconsideration

shall be considered denied, and the appellant may seek judicial review in accordance with Section 63G-4-402.

R722-320-10. Records Protected.

All records pertaining to the issuance of an undercover identification shall be protected under Subsection 63G-2-305(9).

KEY: law enforcement, criminal investigation, undercover identification
June 14, 1999 53-10-104
Notice of Continuation December 20, 2017

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-360. Certificate of Eligibility for Removal from the Sex Offender and Kidnap Offender Registry.
R722-360-1. Purpose.

The purpose of this rule is to establish procedures by which a petitioner may seek a certificate of eligibility for removal from the Utah Sex Offender and Kidnap Offender Registry (SOR) pursuant to Section 77-41-112.

R722-360-2. Authority.

This rule is authorized by Subsection 63G-4-203(1).

R722-360-3. Definitions.

(1) Terms used in this rule are defined in Section 77-41-102.

(2) In addition:

(a) "SOR certificate of eligibility" has the same meaning as "certificate of eligibility" as defined in Subsection 77-41-102(3);

(b) "petitioner" means a person seeking an SOR certificate of eligibility from the bureau; and

(c) "traffic offense" has the same meaning as defined in Subsection 77-40-102(11).

R722-360-4. Application for a Certificate of Eligibility for Removal.

(1)(a) A person may apply for an SOR certificate of eligibility by submitting a completed Application for Removal of Name from the Sex Offender/Kidnap Registry form to the bureau.

(b) The application form must be accompanied by a payment of the application fee established by the bureau in the form of cash, check, money order, or credit card.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for an SOR certificate of eligibility found in Subsections 77-41-112(1) through 77-41-112(3).

(b) In making its determination, the bureau shall also review all federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine whether the petitioner meets the requirements for an SOR certificate of eligibility, the bureau may require the petitioner to submit additional information.

(4) If the bureau finds that the petitioner meets the requirements for the issuance of an SOR certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner must pay the issuance fee established by the bureau in order to receive the SOR certificate of eligibility.

(5) If the bureau finds that the petitioner does not meet the criteria for the issuance of an SOR certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in R722-360-5.

R722-360-5. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility for Removal.

(1) A petitioner may seek agency review of the denial of an application for an SOR certificate of eligibility, as provided by Section 63G-4-301, by mailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for agency review must:

(a) be signed by the petitioner;

(b) state the specific grounds upon which relief is requested;

(c) indicate the date upon which it was mailed; and

(d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for an SOR certificate of eligibility.

(4)(a) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address indicated on the application.

(b) If further review indicates that the petitioner meets the requirements for the issuance of an SOR certificate of eligibility, the order shall indicate that the petitioner must pay the issuance fee before receiving the SOR certificate of eligibility.

(c) If further review indicates that the petitioner does not meet the requirements for an SOR certificate of eligibility, the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in R722-360-6.

R722-360-6. Judicial Review.

A petitioner may seek judicial review of the bureau's final written order on review denying an application for an SOR certificate of eligibility, as provided by Section 63G-4-402, by filing a complaint in the district court within 30 days from the date that the bureau's final written order is issued.

KEY: certificate of eligibility for removal, sex offender registry, kidnap offender registry

December 22, 2015	**63G-4-203(1)**
Notice of Continuation December 20, 2017	**77-41-112**
	77-41-102
	77-40-102(11)

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-900. Access to Bureau Records.
R722-900-1. Purpose.

The purpose of this rule is to establish procedures whereby criminal justice agencies, qualified entities, and individuals may obtain access to bureau records.

R722-900-2. Authority.

This rule is authorized by Subsections 53-10-108(9) and (10).

R722-900-3. Definitions.

(1) Terms used in this rule are found in Section 53-10-102.

(2) In addition:

(a) "agency" means a criminal justice agency as defined in Subsection 53-10-102(9) and 28 U.S.C. Subsection 534(e), or a non-criminal entity authorized to access CJIS under state or federal law;

(b) "bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;

(c) "CJIS" means the Criminal Justice Information System administered by the FBI;

(d) "entity" means an entity qualified to access criminal history information under state or federal law;

(e) "entity id" means an entity's unique identifier that is used to access criminal history information;

(f) "FBI" means the Federal Bureau of Investigation within the United States Department of Justice;

(g) "login id" means a unique identifier in UCJIS for a user or non-user;

(h) "misuse" means the access, use, disclosure, or dissemination of records for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity;

(i) "NCIC" means the National Crime Information Center;

(j) "non-user" means a person working for or with an agency, who does not have direct access to UCJIS but has indirect access to records, including individuals who may:

(i) access computer systems or programs used to access UCJIS files; or

(ii) have unrestricted access to a location containing UCJIS records or a computer with UCJIS access;

(k) "ORI" means originating agency identifier;

(l) "provider" means a law enforcement agency as defined in Subsection 53-1-102(1)(c), the Utah Attorney General's Office, a county attorney's office, a district attorney's office, or a city prosecutor's office;

(m) "records" means records created, maintained, or to which access is granted by the bureau, including criminal history information;

(n) "right of access program" means a program established under Subsection 53-10-108(9) in which a provider makes an individual's UCH and warrant of arrest information available to the subject of the record;

(o) "TAC" means an agency's terminal agency coordinator;

(p) "UCH" means Utah Criminal History;

(q) "UCJIS" means Utah Criminal Justice Information System, which includes the Criminal Justice Information System; and

(r) "user" means a person working for or with an agency who has direct access to UCJIS or who obtains UCJIS records from a person who has direct access.

R722-900-4. Direct Access to UCJIS for Agencies.

(1) An agency seeking direct access to UJCIS shall submit a completed Criminal Justice Agency Application Packet to the bureau.

(2)(a) The bureau shall submit the agency's information to the FBI, which shall determine whether the agency meets the requirements for access to CJIS records established by the FBI.

(b) If the FBI determines the agency is entitled to access any CJIS records, the FBI shall assign the agency an ORI and the bureau shall notify the agency in writing what records it may access on UCJIS using the assigned ORI.

(c)(i) If the FBI determines that the agency is not entitled to access records on CJIS, the bureau shall notify the agency of the FBI's decision and refer the agency to the agencies whose records are available on UCJIS to determine if the agency may have access to those records.

(ii) If the agency is granted access to any records on UJCIS, the bureau shall assign the agency an ORI and notify the agency in writing which records the agency may access using that ORI.

(iii) If the agency is not entitled to access any records on UCJIS, the bureau shall notify the agency in writing and provide notice of the right to appeal pursuant to R722-900-10.

(3)(a) Within 30 days after an agency is granted access to records on UCJIS, it shall submit the following documents to the bureau:

(i) a Criminal Justice Agency Agreement, signed by the agency administrator; and

(ii) a CJIS fingerprint submission form with a legible FD258 fingerprint card for the TAC, which shall be retained in the FBI Rap Back System in accordance with Subsection 53-10-108(14).

(b) The bureau shall conduct a fingerprint-based criminal history background check of the TAC.

(c) If the bureau determines that the TAC meets all the requirements for access to UCJIS, the TAC shall complete the new TAC orientation training provided by the bureau within six months.

(d) If the bureau determines that the TAC does not meet the requirements for access to UCJIS, the bureau shall notify the agency and the TAC in writing including notice of the right to appeal pursuant to R722-900-10.

(4)(a) The agency TAC shall conduct a criminal history check using the name and date of birth of each user or non-user at the agency.

(b) If the criminal history check indicates that the user or non-user does not have any criminal history, the TAC shall create an account on UCJIS and assign the user or non-user a login id.

(c) Within 30 days of assigning a login id to a user or non-user, the TAC shall submit to the bureau:

(i) a UCJIS User Agreement for each user and non-user; and

(ii) a CJIS fingerprint submission form with a legible FD258 fingerprint card for all users and non-users employed at the agency, which shall be retained in the FBI Rap Back System in accordance with Subsection 53-10-108(14).

(d) The bureau shall conduct a fingerprint-based criminal history background check for all users and non-users employed at the agency.

(e) If the bureau determines that a user or non-user meets the requirements for access to CJIS, the bureau shall notify the TAC that the user or non-user has been approved.

(f) If the bureau determines a user or non-user does not meet the requirements for access to CJIS, the bureau shall notify the user or non-user, the TAC, and the agency administrator in writing which includes the right to appeal pursuant to R722-900-10.

(5)(a) Within six months of assigning a login id to a user or non-user, the TAC shall train the user or non-user in accordance with the BCI Operations Manual.

(b) Upon completion of the training, the TAC shall administer a test to the users and submit to the bureau a signed testing agreement form from each user indicating that the user passed all of the required training and testing.

(6)(a) The TAC shall attend the annual TAC training meeting and provide updates to all users and non-user at the agency based on the training.

(b) The TAC shall be responsible for ensuring that all users or non-users at the agency complete all training required by the bureau.

(c) The TAC shall be responsible for ensuring that all users at the agency complete all re-testing required by the bureau.

(d) The bureau may suspend or revoke a TAC's, user's, non-user's access to records if the TAC, user, or non-user fails to complete the required training or testing.

R722-900-5. Access for Entities.

(1)(a) An entity seeking access to criminal background check information for employment background checks or other screening purposes shall submit a completed Qualified Entity Application Packet to the bureau, which includes the following:

(i) a Qualified Entity Application Form;

(ii) documentation that it is a business, organization, or governmental entity that is qualified to access criminal background check information;

(iii) a description of why the entity is seeking to conduct employment background checks or other screenings;

(iv) billing information; and

(v) contact information for:

(A) the entity's administrator; and

(B) a point of contact.

(2)(a) The bureau shall review the entity's application to determine whether the entity meets the requirements for access to criminal background check information found in state or federal law.

(b) The bureau may request additional documentation from the entity to verify whether the entity is qualified to access criminal history information.

(c) If the bureau determines that an entity is qualified to access criminal background check information, it shall notify the entity in writing and assign it an entity id.

(d) If the bureau determines the entity is not qualified to access criminal background check information, the bureau shall notify the entity of the bureau's decision in writing and provide notice of the right to appeal pursuant to R722-900-10.

(3)(a) Once an entity has been granted access to criminal background check information, it shall submit the following documents to the bureau:

(i) a Qualified Entity Agreement, signed by the entity administrator; and

(ii) a signed Qualified Entity Employee Agreement for each employee of the entity who will have access to criminal background check information.

(b) Any employee of the entity who has access to criminal background check information shall successfully complete all training and testing required by the bureau.

(c) The bureau may suspend or revoke access to criminal background check information if an employee of an entity fails to complete the required training and testing.

R722-900-6. Individual Right of Access.

(1) An individual may review his or her own criminal history record information contained in a UCH, by submitting a completed Criminal History Record Application to the bureau along with:

(a) a set of fingerprints which have been verified with photo identification at the time the fingerprints were taken;

(b) a copy of a government issued photo identification; and

(c) payment of the processing fee required by Subsection 53-10-108(9)(b).

(2)(a) An individual may challenge the completeness and accuracy of the information contained in the individual's UCH by submitting a completed Application to Challenge Criminal History Records to the bureau along with:

(i) the challenge fee; and

(ii) documentation to establish what information is missing or incorrect on the UCH.

(b) The challenge process shall be an informal adjudicative proceeding under Section 63G-4-203.

(c)(i) If the bureau determines that the individual's criminal history record information is incomplete or inaccurate, the bureau shall amend the UCH.

(ii) The bureau shall send the individual a letter notifying the individual of the changes made to the individual's UCH and a copy of the individual's corrected UCH.

(d)(i) If the bureau determines that the criminal history record information is correct, the bureau shall notify the individual in writing that the UCH shall not be amended.

(ii) An individual may appeal the bureau's decision not to amend a record to district court in accordance with Section 63G-4-402.

(e) If the bureau determines that the individual seeking to challenge the information in the UCH is not the subject of the record, the bureau shall notify the individual in writing.

R722-900-7. Right of Access Programs.

(1) A provider seeking to establish a right of access program shall submit a completed Right of Access Contract.

(2)(a) The bureau shall review the Right of Access Provider Contract to determine whether the provider may conduct a right of access program.

(b) The bureau may request additional information from the provider to determine whether the provider may conduct a right of access program.

(c) If the bureau determines that a provider is qualified to conduct a right of access program, it shall notify the provider in writing.

(d) If the bureau determines the provider is not qualified to conduct a right of access program, it shall notify the provider of the bureau's decision in writing.

R722-900-8. Audits.

(1)(a) All agencies and entities shall submit to audits conducted by the bureau.

(b) Upon request, an agency and entity shall complete the Pre-audit Request within 30 days from the date it is sent by the bureau.

(c) An agency and entity shall complete the Audit Survey within 30 days from the date it is sent out by the bureau.

(d) The bureau shall review the information submitted by the agency and entity to determine if the agency and entity is in compliance with applicable state and federal statutes, rules, and regulations.

(e) The bureau shall notify the agency and entity of the audit results in writing and give the agency, entity, or provider an opportunity to rectify any issues it found during the audit.

(f) The bureau may suspend or revoke an agency's access to UCJIS or an entity's access to criminal background

check information if it fails to comply with the audit or rectify issues found during the audit.

R722-900-9. Misuse.

(1) Anyone who has reason to believe that records have been misused may submit a written complaint to the bureau.

(2)(a) The bureau shall conduct a review of its records to determine if there is any evidence to support the complaint.

(b) If the bureau finds evidence indicating records may have been accessed, used, disclosed, or disseminated, the bureau shall notify the agency TAC or entity point of contact and request that an internal review be conducted.

(3) The agency or entity shall be responsible for conducting an internal review to determine if there has been misuse of a record and submit its findings to the bureau within 30 days.

(4)(a) If the agency or entity determines there was misuse, the agency or entity shall submit a corrective action plan to the bureau.

(b) The bureau shall review the corrective action plan to determine if the action taken by the agency or entity was sufficient to address the misuse.

(5) If the bureau finds that an agency, entity, TAC, user, non-user, or employee of an agency or entity misused records, the bureau may:

(a) suspend or revoke the access of the agency, entity, TAC, user, non-user, or employee of an agency or entity; and

(b) refer the matter to the appropriate law enforcement agency for investigation and prosecution.

(6) The bureau may suspend or revoke access to records by an agency, entity, TAC, user, non-user, or employee of an agency or entity if the agency, entity, TAC, user, non-user, or employee of an agency or entity fails to comply with any terms of the signed agreement.

R722-900-10. Appeal.

(1)(a) An agency or entity denied access to records may appeal the bureau's decision by sending a written request for review to the bureau within 30 days of the date of the denial of access.

(b) An agency or entity may appeal the bureau's decision to deny a TAC, user, or non-user access to records by sending a written request for review to the bureau within 30 days of the date of the denial of access.

(2) A request for review shall include:

(a) a description of the grounds for review; and

(b) supporting documentation.

(3)(a) The bureau director or the director's designee shall review the request for review and issue a written decision within 30 days from the date of the appeal.

(b) If the bureau's decision to deny an agency or entity is upheld, the bureau shall notify the agency or entity of the right to appeal to the district court by complying with the requirements in Section 63G-4-402.

(c) If the bureau's decision to deny a TAC, user, or non-user is upheld, there shall be no further right of appeal.

KEY: access to records, UCJIS, criminal justice agencies, qualified entities

December 22, 2015	**53-10-102**
Notice of Continuation December 20, 2017	**53-10-108**

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they are able to recover the reasonable and prudent costs of providing basic telecommunications service while charging just, reasonable and affordable rates; and,

2. to ensure funds collected and disbursed from the USF are used efficiently and in the public interest.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

J. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file

reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1) and is used in this rule, R746-360, to the extent consistent with federal law.

(b) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1)(c) and is used in this rule, R746-360, to the extent consistent with federal law.

(c)(i) Providers of access lines and providers of connections are hereafter referred to jointly as "providers."

(ii) Access lines and connections are hereafter referred to jointly as "access lines."

(2) Through December 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates.

(3) As of January 1, 2018, the Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows.

(a) Unless Subsection R746-360-4(5) applies, providers shall remit to the Commission $0.36 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c) A provider may collect the surcharge:

(i) as an explicit charge to each end-user; or

(ii) through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission $0.36 per month per access line for such service (new access lines or connections, or recharges for existing lines or connections) purchased on or after January 1, 2018.

(4)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.

(5)(a) Subject to Subsection R746-360-4(5)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-360-4(3), and:

(i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge; or

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-360-5(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-360-5(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an

"eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Floor.

1. Unless a petition brought pursuant to Subsection (B)(2) is granted after adjudication, to be eligible for USF subsidization, a telecommunications corporation shall charge, at a minimum, $18 per line for basic telecommunications service.

2.a. A telecommunications corporation may petition the Commission to deviate from the Affordable Base Rate set forth in this Subsection (B)(1).

b. A telecommunications corporation that files a petition under this Subsection (B)(2)(a) shall:

i. demonstrate that the Affordable Base Rate is not reasonable in the particular geographic area served; or

ii. impute income up to the Affordable Base Rate in calculating the telecommunications corporation's state USF subsidization.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from total embedded costs. Total embedded costs shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from the total project cost.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: affordable base rate, public utilities, telecommunications, universal service fund
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Notice of Continuation November 13, 2013 54-4-1
54-8b-15

R850. School and Institutional Trust Lands, Administration.
R850-70. Sales of Forest Products From Trust Lands Administration Lands.
R850-70-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert products, and other vegetative material from Trust Lands Administration lands.

R850-70-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall complete the following planning obligations for all competitive and non-competitive forest product sales, in addition to the rule-based analysis and approval processes required by this rule:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

(b) Evaluation of and response to comments received through the RDCC process; and

(c) Evaluate and respond to any comments received through the advertising and notice processes described in R850-70-600(1).

2. All other forest product sales within this category of activity carry no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-70-200. Definitions.

1. Sawlogs: portions of a tree stem that exceed seven feet in length and are at least six inches in diameter inside bark at the small end.

2. Poles: portions of a tree stem that are at least ten feet in length and do not exceed six inches in diameter at four and one-half feet above the ground.

3. Mine Props: portions of a tree stem that are between seven and ten feet in length, and six to nine inches diameter inside bark at the small end.

4. Posts: portions of a tree or tree stem, generally Utah juniper, which are no more than ten feet in length and are less than six inches in diameter at the top (small end).

5. Fuelwood: any portion of a tree, including those portions defined as sawlogs, poles, mine props, or posts that is harvested for use as fuel.

6. Christmas Tree: any coniferous tree, or part thereof, cut and removed from the place where grown without the foliage being removed.

7. Ornamental: any coniferous or deciduous tree, shrub, or bush less than 20' in height and no more than six inches diameter at four and one-half feet above the ground, which is removed from a natural setting, generally with roots attached, for transplant elsewhere.

8. Desert Plants: include any member of the Cactaceae Family or the Agavaceae Family.

9. Other Products: include boughs, branches, pinyon nuts, cones, Juniper berries, and native seed.

R850-70-300. Proof-of-Ownership.

Proof-of-ownership shall be issued with each sale of forest products in compliance with Section 78B-8-602.

R850-70-400. Permit Sales.

The agency may make sales of forest products, with the exception of sawlogs, with a Small Forest Products Permit when the total sale value does not exceed $500.00. The permit shall be on a form prescribed by the agency. Persons purchasing Small Forest Product Permits shall be restricted to a total value of $500.00 per commodity per calendar year. A Small Forest Product Permit does not grant exclusive use of the permitted lands or the resources contained thereon.

R850-70-500. Noncompetitive Sales.

If the director finds it to be in the best interests of the trust, the agency may sell forest products at not less than an agency-established minimum value without soliciting competitive bids.

R850-70-600. Competitive Sales.

1. Sales of forest products shall be initiated by the agency and shall follow the procedures below:

(a) All competitive sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. The cost of the notice will be borne by the successful applicant. This notice shall contain, but is not limited to:

i) the legal description of the affected lands;
ii) the species and estimated quantity of forest products;
iii) minimum sale price;
iv) bond amounts;
v) advertising and processing costs, as far as is known;
vi) dates of bidding period;
vii) date, time, and location of oral auction; and
viii) bidder qualifications.

(b) Notice shall also be given to potential purchasers and other interested parties, whose names are on an agency maintained mailing list prior to any competitive sale.

(c) Initial bidding shall be conducted through sealed bids. Each sealed bid must contain 10% of the bid amount and the application fee. The bidders submitting the three highest sealed bids shall be allowed to enter into an oral auction.

(d) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within ten business days of the auction that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown. The agency shall declare the successful bidder within ten business days of the bid opening. Failure of the successful bidder to execute a contract within 30 days of receipt may result in cancellation of the sale and forfeiture of all monies submitted.

2. The agency may withdraw, at its sole discretion any forest products sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

R850-70-700. Timber Sale Contracts.

1. Timber Sale Contracts must be used for all sales of sawlogs and any other forest product where the value exceeds $500.00.

2. Each Timber Sale Contract shall contain the provisions necessary to ensure the responsible harvest of forest products, including the applicable provisions of 53C-4-202.

R850-70-800. Timber Harvesting.

1. Prior to commencement of harvest operations, the purchaser shall submit a timber harvest plan for agency review. Harvesting operations shall not commence until the purchaser is notified, in writing, that the timber harvest plan has been approved by the agency.

2. Prior to commencement of harvest operations, the purchaser shall post with the agency bonds in the form and

amounts as may be determined by the agency to assure compliance with all terms and conditions of the sale contract. Such bonds shall include the following:

(a) A performance bond shall be submitted in an amount at least twice the estimated cost of rehabilitation.

(b) A payment bond shall be submitted in an amount equal to the full purchase price of the sale unless the sale has been paid for in advance, or, at the discretion of the agency, the full price of the largest cutting unit of the sale.

3. All bonds posted may be used for payment of all monies due to the Trust Lands Administration on the total purchase price, and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.

4. The purchaser's bonds shall be maintained in effect even if the purchaser conveys all or part of the sale interest to an assignee or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.

5. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided the agency first gives the purchaser 30 days written notice stating the increase and the reason(s) for the increase.

6. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) an irrevocable letter of credit for a period longer than the term of the sale.

7. Bonds shall remain in force until such time as all contract payments and performance provisions have been satisfied by the purchaser and so documented by the agency in writing.

R850-70-900. Assignments.

1. Competitively let sales may be assigned, in accordance with procedures established by the agency, to any person, firm, association, or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the agency, provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.

2. Permits and non-competitive sales may not be assigned.

R850-70-1000. Extensions of Time.

Extensions of time to complete the harvesting operations authorized by a timber contract may be granted if the director finds it to be in the best interests of the trust. Prior to the approval of a request for an extension of time, the agency may require amendments to the contract, including, but not limited to:

(a) Increasing the amounts and extending the effective dates of bonds; and,

(b) Increasing the price of the forest products authorized by the contract.

R850-70-1100. Forest Product Valuation.

Forest products shall be offered for sale based on a methodology or price schedule to be determined by the agency pursuant to board policy.

R850-70-1200. Long-Term Agreements.

1. Long-term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the agency may enter into an LTA with a purchaser for a period not to exceed ten years provided that:

(a) Resource or other benefits can be demonstrated by the LTA.

(b) The LTA is advertised and competitively bid.

(c) The area included in the LTA is defined by legal or other tangible description.

(d) The LTA includes provisions for periodic reappraisal and adjustment of prices.

(e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.

(f) The LTA provides for amendment and cancellation during the term of the LTA.

(g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.

(h) Each LTA states that access granted by the LTA is not exclusive.

(i) A due-diligence provision is included in each LTA.

R850-70-1300. Fees and Procedures.

The agency may establish fees and develop procedures necessary to provide for the administration and sale of forest products pursuant to Section 53C-1-302(1)(b).

KEY: forest products, administrative procedures, timber
July 2, 2004 53C-1-302(1)
Notice of Continuation December 4, 2017 53C-2-201(1)(a)