R23. Administrative Services, Facilities Construction and Management.
R23-33. Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board.
R23-33-1. Purpose.

The purpose of this Rule R23-33 is to establish a prioritization and scoring process for capital improvements that occurs annually before the Building Board.

R23-33-2. Authority.

This Rule R23-33 is authorized under Subsection 63A-5-104(10) indicating that the Board may adopt a rule allocating Capital Improvements subject to terms in the statute. The Building Board has administrative rulemaking authority under Subsection 63A-5-103(2).

R23-33-3. Definitions.

The following definitions shall apply to this Rule R23-33:

(1) "Board" means the Utah State Building Board established under Title 63A, Chapter 5, Utah Code.

(2) "Building Board Director" means the employee of the Department of Administrative Services that is assigned as an administrator to the Utah State Building Board and hereinafter referred to as the "BBD."

(3) Definitions provided in Utah Code Section 63A-5-104 shall apply to the terms used in this Rule R23-33.

R23-33-4. General Overview of Process.

The capital improvement prioritized scoring process consists of five steps as follows:

(1) A Project Needs Request;

(2) Preliminary Project Prioritization and Preliminary Scoring by the BBD;

(3) Preliminary BBD Scored Project Review and Revisions Process involving agencies and institutions, the Division of Facilities Construction and Management, and the BBD;

(4) Submitting the revised Scored List to Board and a Utah State Legislature subcommittee involved with State facility design and construction; and

(5) Review and Final Approval by the Utah State Building Board of the list for submittal to the Utah Legislature.

R23-33-5. Step One: Project Needs Request.

(1) Submission guidelines and formatting requirements shall be approved by the Board prior to submission by the BBD to the agencies and institutions.

(i) Submission guidelines include the Project Scoping Form which describes in detail the work that needs to be accomplished, statutory requirements, identification of hard and soft costs, submission deadlines and other requirements.

(ii) The guidelines shall also describe the priority classifications which are in the following ranked order of priority: 1-life safety; 2-critical; 3-necessary; and 4-programatic, as well as the scoring criteria.

(2) Prior to June of each calendar year, the BBD shall notify agencies and institutions to begin developing their Project Needs Request which includes the agency or institution's prioritized list for the next fiscal year's funding cycles as well as the prioritized scoring process submission guidelines; all to be consistent with applicable law.

(3) The BBD may provide agencies and institutions with a list of existing Facility Condition Assessment Data ("FCA"), including Risk Management property number, life cycle related to the need, unique FCA project number, and the estimated cost. To the extent the BBD does not provide such information, the agency or institution is required to obtain the information from the FCA database maintained by DFCM and any supplemental information obtained by the agency or institution.

(4) The Project Needs Request, including the prioritization, shall be submitted by the agencies and institutions to the BBD no later than August 15th immediately following the BBD's notice referred to above.

R23-33-6. Step Two: Preliminary Project Prioritization and Preliminary Scoring by the BBD.

(1) The BBD shall review the agency or institution's Project Needs Request, including the prioritization and classification.

(2) The BBD shall provide a copy of the submittal to the State Building Energy Efficiency Program Director to determine if any listed projects qualify for energy savings components, energy improvements/developments or qualification for revolving loans.

(3) The BBD then compiles all the submittals from every agency and institution into one comprehensive list. The comprehensive list includes the classification codes. The BBD applies the prioritized scoring method to each of the submittals. The comprehensive list shall be consistent with the statutory standards set forth by the Utah Legislature and utilized throughout the process.

(4) The BBD shall notify the agency or institution of any concerns regarding the Project Needs Request.

(5) At any time, the BBD may initiate conversations and meetings with the agency or institution to obtain information, clarification or seek to reach an agreement on any concerns.

R23-33-7. Step Three: Scored Project Review and Revisions Process involving agencies and institutions, the Division of Facilities Construction and Management, BBD and the Board.

(1) The BBD shall distribute the BBD's preliminary master capital improvement list including categorization, prioritization and scoring, to the Division of Facilities Construction and Management as well as the agencies and institutions for review and comment.

(2) A Construction Budget Estimate (CBE) shall be prepared by the appropriate State employee responsible for preparing a CBE for the particular project using the CBE form provided by the BBD. The CBE shall be based on the Project Scoping Form provided by the BBD.

(3) Each completed CBE form and Project Scoping Form shall be submitted promptly to the BBD and no later than October 15th of the particular year.

(4) The BBD will review each CBE and Project Scoping Form. The BBD will prepare the preliminary scoring along with packet of prioritized capital improvement projects intended for the Board meeting in December. This preliminary scoring and packet shall be submitted by the BBD to the affected agencies or institutions. If there is any disagreement between the BBD and any particular agency or institution, the BBD and the particular agency or institution may endeavor to resolve this matter prior to the packet being sent to the Board. During any such resolution process between the BBD and an agency or institution, the BBD's preliminary scoring and packet may be modified.

(5) The resulting packet and scoring prepared by the BBD under subsection (4) of this Rule, shall be distributed to the Board members as well as the agencies and institutions at least seven days in advance of the December Board meeting.

(6) The Board meeting to review the BBD's capital improvement submittal shall be on or about December 15th of each year.

(7) At the December Board meeting, the Board shall consider input from the BBD, an affected agency or institution as well as interested persons as appropriate.

R23-33-8. Step Four: Submitting the Scored List to the

Appropriate Subcommittee of the Utah State Legislature.

(1) At the January Board meeting, the Board shall make a final prioritization recommendation for submission to the appropriate subcommittee of the Utah Legislature. The recommendation must be consistent with the statutory standards set forth by the Utah Legislature and utilized throughout the process.

(2) The Board's list is submitted to the appropriate subcommittee of the Utah Legislature as required by law, no later than the January 15th following the January Board meeting.

R23-33-9. Step Five: Review and Final Approval by the Utah State Building Board.

After the consideration by the Utah Legislature, the Board will make its final approval of the capital improvements lists consistent with any direction from the Legislature.

KEY: building board, capital improvements, prioritization, scoring

March 10, 2014 **63A-5-103(2)**
63A-5-104(10)

R70. Agriculture and Food, Regulatory Services.
R70-630. Water Vending Machine.
R70-630-1. Authority.

Promulgated under authority of Title 4, Chapter 5.

R70-630-2. Purpose.

The purpose of these rules is to set forth requirements and controls for vending machines designed to dispense water intended for human consumption to assure:

(1) Consumers using such machines are given appropriate information as to the nature of the vended water;

(2) The quality of the water vended meets acceptable standards for potability; and

(3) The vending equipment is installed, operated, and maintained to protect the health, safety, and welfare of the consuming public.

R70-630-3. Definitions.

For the purpose of this rule, the following words and phrases shall have the meanings indicated:

(1) "Approved" means a water vending machine, drinking water source, backflow prevention device or other devices or services that meets the minimum standards of this rule. Approved does not imply satisfactory performance for a specific period of time. Approval, when required, shall be in writing based upon departmental review of data submitted by the water vending industry, manufacturers, operators, owners or managers.

(2) "Approved material" means materials approved by the department as being free of substances which may render the water injurious to health or which may adversely affect the flavor, color, odor, radiological, microbial, or chemical quality of the water.

(3) "Department" means the Department of Agriculture and Food, Division of Regulatory Services, or its representative.

(4) "Nontoxic" means free of substances which may render the water injurious to health or may adversely affect the flavor, color, odor, chemical or microbial quality of the water.

(5) "Person" means any individual, partnership, firm, company, corporation, trustee, association, public body, or private entity engaged in the water vending business.

(6) "Potable water" means water satisfactory for drinking, culinary, and domestic purposes, meeting the quality standards of rule R309-103, under the Department of Environmental Quality, the Division of Drinking Water.

(7) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method of equal effectiveness that meets the requirements for purified water as described in the 21st Edition of the United States Pharmacopoeia issued by Mack Publishing, Easton, Penn. 18042.

(8) "Sanitize" means the effective bactericidal treatment of clean surfaces of equipment, utensils, and containers by a process that provides enough accumulative heat or concentration of chemicals for sufficient time to reduce the bacterial count, including pathogens, to a safe level.

(9) "Sanitizing solution" means Aqueous solutions described by 21 CFR 178.1010, 2004, for the purpose of sanitizing food or water contact surfaces.

(10) "Vended water" means water that is dispensed by a water vending machine or retail water facility for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans. Vended water does not include water from a public water system which has not undergone additional treatment as indicated in R70-630-5(4).

(11) "Vending machine" means any self-service device which upon insertion of a coin, coins, paper currency, token, card, or receipt of payment by other means dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation.

(12) "Water vending machine" means a vending machine connected to water designed to dispense drinking water, purified and/or other water products. Such machines shall be designed to reduce or remove turbidity, off-taste, odors, to provide disinfectant treatment, and may include processes for dissolved solid reduction or removal.

(13) "Water vending machine operator" means any person who owns, leases, manages, or is otherwise responsible for the operation of a water vending machine.

R70-630-4. Location and Operation.

(1) Each water vending machine shall be located indoors or otherwise protected against tampering and vandalism, and shall be located in an area that can be maintained in a clean condition, and in a manner that avoids insect and rodent harborage.

(2) The floor on which a water vending machine is located shall be smooth and of cleanable construction.

(3) Each water vending machine system shall have an adequate system for collecting and disposing drippage, spillage, and overflow of water to prevent creation of a nuisance.

(a) Where process waste water is collected within the processing unit for pumping or gravity flow to an outside drain, the waste water drain line shall terminate at least two inches above the top rim of the retention vessel within said unit.

(b) The waste line from the water vending machine to an approved drainage system shall be air-gapped.

(c) Containers or drip pans used for the storage or collection of liquid wastes within a vending machine shall be leakproof, readily removable, easily cleanable, and corrosion resistant. In water vending machines which utilize the bottom of the cabinet interior as an internal sump, the sump shall be readily accessible and corrosion resistant. The waste disposal holding tank shall be maintained in a clean and sanitary manner.

(4) Each machine shall have a backflow prevention device for all connections with the water supply source which meets requirements of The International Plumbing Code and its amendment as adopted by the State of Utah Building Codes Commission and shall have no cross connections between the drain and potable water.

(5) Each person who establishes, maintains, or operates any water vending machine in the state, shall first secure a Water Vending Machine Operating Registration issued under Section 4-5-9. The Registration shall be renewed annually.

(6) Application for Registration shall be made in writing and include the location of each water vending machine, the source of the water to be vended, the treatment that the water will receive prior to being vended, and the name of the manufacturer and the model number of each machine.

(7) The source of the water supply shall be an approved public water system as defined under the Department of Environmental Quality, Division of Drinking Water. Upon application for an initial operating Registration, the operator shall submit information which indicates the product being dispensed into the container meets all finished product quality standards applicable to drinking water. When indicated by reason of complaint or illness, the department may require that additional analyses be performed on the source or products of water vending machines.

(8) Each water vending machine shall be maintained in a clean and sanitary condition, free from dust, dirt, and vermin.

(9) Labels or advertisements located on or near water vending machines shall not imply nor describe the vended water as "spring water."

(10) Water vending machine labels or advertisements shall not describe or use other words to imply, on the machine or elsewhere, the water as being "purified water" unless such water conforms to the definition contained in this rule.

(11) Water vending machine labels or advertisements shall not describe, on the machine or elsewhere, the water as having medicinal or health giving properties.

(12) Each water vending machine shall have in a position clearly visible to customers the following information:

(a) Name and address of the operator.

(b) Name of the water supply purveyor.

(c) The method of treatment that is utilized.

(d) The method of post-disinfection that is utilized.

(e) A local or toll free number that may be called for further information, problems, or complaints; or the name of the store or building manager can be listed when the machine is located within a business establishment and the establishment manager is responsible for the operation of the machine.

R70-630-5. Construction Requirements.

(1) Water vending machines shall comply with the construction and performance standards of the National Sanitation Foundation or National Automatic Merchandising Association. A list of acceptable third party certification groups is available from 8:00 to 5:00 p.m. at the Utah Department of Agriculture and Food. Water vending machines shall be designed and constructed to permit easy cleaning and maintenance of all exterior and interior surfaces and component parts.

(2) Water contact surfaces and parts of the water vending machine shall be of non-toxic, corrosion-resistant, non-absorbent material capable of withstanding repeated cleaning and sanitizing treatment.

(3) Water vending machines shall have a guarded or recessed spout.

(4) Owners, managers, and operators of water vending machines shall ensure that the methods used for treatment of vended water are acceptable to the department. Such acceptable treatment includes distillation, ion-exchange, filtration, ultra-violet light, mineral addition, and reverse osmosis.

(5) Water vending machines shall be equipped to disinfect the vended water by ultra-violet light, ozone, or equally effective methods prior to delivery into the customer's container.

(6) Water vending machines shall be equipped with monitoring devices designed to shut down operation of the machine when the treatment or disinfectant unit fails to properly function.

(7) Water vending machines shall be equipped with a self-closing, tight-fitting door on the vending compartment if the machine is not located in an enclosed building.

(8) Granular activated carbon, if used in the treatment process of vended water, shall comply with the specifications provided by the American Water Works Association for that substance (Standard B604-90).

R70-630-6. Operator Requirements.

(1) Water vending machine operators shall have on file and perform a maintenance program that includes:

(a) Visits for cleaning, sanitizing, and servicing of machines at least every two weeks.

(b) Written servicing instructions.

(c) Technical manuals for the machines.

(d) Technical manuals for the water treatment appurtenances involved.

(2) Parts and surfaces of water vending machines shall be kept clean and maintained by the water vending machine operator. The vending chamber and the vending nozzle shall be cleaned and sanitized each time the machine is serviced. A record of cleaning and maintenance operations shall be kept by the operator for each water vending machine. These records shall be made available to the department's employees upon request.

(3) Water vending machine operators shall ensure that machines are maintained and monitored to dispense water meeting quality standards specified in this rule. Water analysis shall be performed using approved testing procedures set forth in 21 CFR 165, 2004. Each machine's finished product shall be sampled at least once every three months by the operator, to determine total coliform content. However, provided a satisfactory method of post-treatment disinfection is utilized and based on a sustained record of satisfactory total coliform analyses, the department shall allow modification of the three-month sampling requirement as follows:

(a) When three consecutive three-month samples are each found to contain zero coliform colonies per 100 milliliters of the vended water, microbiological sampling intervals shall be extended to a period not exceeding six months. Should a subsequent six-month sample test positive for total coliform, the required sampling frequency shall revert to the three-month frequency until three consecutive samples again test negative for total coliform bacteria.

(b) If any sample collected from a machine is determined to be unsatisfactory, exceeding the zero coliform colonies per 100 milliliter, the machine shall be cleaned, sanitized and resampled immediately. If, after being cleaned and sanitized, the vended product is determined to be positive for coliform, the machine shall be taken out of service until the source of contamination has been located and corrected.

(4) Each water vending machine operator shall take whatever investigative or corrective actions are necessary to assure a potable water is supplied to consumers.

(5) The vended water from each vending machine utilizing silver-impregnated carbon filters in the treatment process shall be sampled once every six months for silver.

(6) All records pertaining to the sampling and analyses shall be retained by the operator for a period of not less than two years. Results of all analyses shall be available for department review upon request.

R70-630-7. Duties and Responsibilities of the Department.

(1) The department may collect and analyze samples of vended water when necessary to determine if the vended water meets the standards of potable water.

(2) After considering the source of water and the treatment process provided by the water vending machine, the department shall determine whether the finished product water will or will not meet quality standards as provided under rule R309-103 under the Division of Drinking Water. If it is determined that the water will not meet potable water standards, the Registration to operate a water vending machine shall be denied.

(3) The department will evaluate water vending machines, as well as their locations and support facilities, as often as may be deemed necessary for enforcement of the provisions of this rule.

(4) Water vending machine operators shall allow the department to examine necessary records pertaining to the operation and maintenance of the vending machines and also provide access to the machines for inspection at reasonable hours.

R70-630-8. Enforcement and Penalties.

(1) The department shall order a water vending machine operator to discontinue the operation of any water vending machine that represents a threat to the life or health of any person, or whose finished water does not meet the minimum standards provided for in this rule. Such water vending machine shall not be returned to use until such time the department determines that the conditions which caused the discontinuance of operation no longer exist.

(2) The department shall deny a Registration (procedures for Registration denial are stated in R51-2) when it is determined that there has been a substantial failure to comply

with the provisions of this rule by which the health or life of the consumers is threatened or impaired, or by which or through which, directly or indirectly, disease is caused. Registration can also be denied or suspended if the water has been adulterated.

R70-630-9. Preemption of Authority to Regulate.

The regulation of water vending machines is hereby preempted by the state. No county or municipality may adopt or enforce any ordinance which regulates the licensure or operation of water vending machines, unless the local health department authority in consultation with and approval of UDAF, determine that unique conditions exist within the county which make it more appropriate for the county to regulate the water vending machines in order to protect the health or welfare of the public.

KEY: food inspection
September 8, 2004 4-5
Notice of Continuation December 17, 2018

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) A "multiple-licensed facility" includes any retail license that shares a licensed premises as allowed by 32B-5-207(2), retail licensed premises that are located in the same room as allowed by 32B-5-207(6), and retail licensees that are authorized for dispensing from an adjacent retail licensed premises as allowed by 32B-6-205.2(11)(a)(iii), 305.2(11)(a)(iii) and 905.1(12)(a)(iii) and any sublicense located within the boundary of a resort building of a resort license under 32B-8 or the boundary of a hotel of a hotel license under 32B-8b.

(b) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in connection with each retail license.

(c) "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) The dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of one retail license to patrons in premises of another retail license in a multiple-licensed facility 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 connection with each retail license;

(b) cost allocation of the alcoholic beverage product cost must be made for each retail license 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 in connection with a retail license 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 retail 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 retail 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 retail licensed premises to the various approved retail licenses, or dispensed to each retail license through the use of a remote storage alcoholic beverage dispensing system.

(3) At a multiple-licensed facility where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each retail license 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 retail license 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 retail licensee premises within the facility.

(4) In accordance with 32B-5-207(5)(d) which requires that the commission establish by rule a procedure by which a licensee surrenders a retail license if they have a bar or tavern in the same room as a restaurant in violation of 32B-5-207.

(a) On May 1 2018 a notice will be sent to all bar establishment licensees informing them that renewal of the bar license will be considered notice of intent to surrender any restaurant license in violation of 32B-5-207 unless they apply for a change in floor plan with the department.

(b) On May 1, 2018 a notice will be sent to any tavern that has both a restaurant and a tavern asking them to return a form electing whether to surrender the tavern or restaurant if they are in violation of 32B-5-207 or to apply for a change in floor plan. Failure to respond will result in surrender of restaurant license as of July 1, 2018.

(c) Those that are seeking to keep both licenses shall apply for a change in floor plan with the department outlying what will be done to comply with the requirements of 32B-5-207. If modifications are not completed by July 1, 2018 one or more of the licenses will need to cease operations in accordance with 32B-5-309 until modifications have been completed and staff has inspected the multiple premises to verify compliance with 32B-5-207.

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.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) 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 bar and only upon a stage or in a designated area approved by the commission in accordance with commission rule in accordance with 32B-1-505(4).

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or bar 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.

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or bar.

(b) A tavern or bar 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 bar license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or bar 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 bar 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, 32B-1-601-608.

(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 malt beverages as required by 32B-1-606(2)(c) and (d).

(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) An application for approval is required for any revision of a previously approved label.

(d) A "revision" includes any changes to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(e) An application for approval is not required for any changes 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.

(f) Pursuant to 32B-1-606, a 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; and

(v) separate and apart from any descriptive or explanatory information.

(g) 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 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 24, 2018
Notice of Continuation May 2, 2016

32B-2-201(10)
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.
R81-4. Retail Licenses.
R81-4-1. Authority.
Reserved.

R81-4-2. Purpose.
Reserved.

R81-4-3. Definitions.
Pursuant to the authority and purpose given in 32B-6-202, 32B-8b-102(2), and 32B-1-102(46) the commission shall define the following as such:
(1) "Hotel" means a commercial lodging establishment:
(a) that offers temporary sleeping accommodations for compensation;
(b) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;
(c) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and
(d) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

R81-4-4. Verification of Proof of Age by Applicable Licensees.
(1) Authority. 32B-1-407(4)(b) and (5) and 32B-2-202(1)(b).
(2) Purpose.
(a) 32B-1-407 requires applicable licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.
(b) This rule:
(i) establishes the minimum technology specifications of electronic age verification devices; and
(ii) establishes the procedures for recording identification that cannot be electronically verified; and
(iii) establishes the security measures that must be used by the bar licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32B.
(3) Application of Rule.
(a) An electronic age verification device:
(i) shall contain:
(A) the technology of a magnetic stripe card reader;
(B) the technology of a two dimensional ("2d") stack symbology card reader; or
(C) an alternate technology capable of electronically verifying the proof of age;
(ii) shall be capable of reading:
(A) a valid state issued driver's license;
(B) a valid state issued identification card;
(C) a valid military identification card; or
(D) a valid passport;
(iii) shall have a screen that displays no more than:
(A) the individual's name;
(B) the individual's age;
(C) the number assigned to the individual's proof of age by the issuing authority;
(D) the individual's the birth date;
(E) the individual's gender; and
(F) the status and expiration date of the individual's proof of age; and
(iv) shall have the capability of electronically storing the following information for seven days (168 hours):
(A) the individual's name;
(B) the individual's date of birth;
(C) the individual's age;
(D) the expiration date of the proof of age identification card;
(E) the individual's gender; and
(F) the time and date the proof of age was scanned.
(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:
(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:
(A) the type of proof of age identification document presented;
(B) the number assigned to the individual's proof of age document by the issuing authority;
(C) the expiration date of the proof of age identification document;
(D) the date the proof of age identification document was presented;
(E) the individual's name; and
(F) the individual's date of birth.
(c) Any data collected either electronically or otherwise:
(i) shall be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;
(ii) for purposes of investigating Title 32B Alcoholic Beverage Control Act, shall be provided upon request to a law enforcement officer or any other person authorized to investigate violations of Title 32B Alcoholic Beverage Control Act;
(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;
(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and
(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted or destroyed.
(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32B-1-405.

KEY: alcoholic beverages
December 24, 2018 **32B-8b-102(2)**
32B-2-202
32B-1-102(46)

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.

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) 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.

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-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 24, 2018 **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.

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) 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.

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-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 24, 2018 **32B-2-202**
Notice of Continuation July 3, 2018 **32B-5-303(3)**
32B-6-207
32B-6-301 through 305.1

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

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

R81-4E-2. Application.

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

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

(b) the department has inspected the resort premise.

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

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

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

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

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

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

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

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

R81-4E-3. Bonds.

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

R81-4E-4. Insurance.

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

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

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

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

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

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

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

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

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

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

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

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

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

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

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

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

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

R81-4E-8. Liquor Storage.

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

the department.

R81-4E-9. Alcoholic Product Flavoring.

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

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

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

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

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

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

(1) Contents of Alcoholic Beverage Menu.

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

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

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

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

R81-4E-13. Identification Badge.

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

R81-4E-14. Brownbagging.

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

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

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

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

R81-4E-15. Resort Spa Sublicense.

(1) Definitions.

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

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

(3) Minors in Lounge or Bar Areas.

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

(b) "Lounge or bar area" includes:

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

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

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

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

R81-4E-16. Applicability of Rules.

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

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

KEY: alcoholic beverages

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R81. Alcoholic Beverage Control, Administration.
R81-5. Bar Establishment Licenses.
R81-5-1. Licensing.

(1) Bar establishment 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) At the time the commission grants a bar establishment license the commission must designate whether the bar establishment qualifies to operate as an equity, fraternal, bar based on criteria in 32B-6-404.

(b) After any bar establishment license is granted, a bar establishment may request that the commission approve a change in the bar establishment's classification in writing supported by evidence to establish that the bar establishment qualifies to operate under the new class designation based on the criteria in 32B-6-404.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the bar establishment has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(3)(a) A converted full service restaurant licensee must operate as described in 32B-6-404.1, and must maintain at least the tiered percentages outlined in32B-6-404.1(4) of its total business from the sale of food, not including mix for alcoholic beverages, and service charges.

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

(c) If any inspection or audit discloses that the sales of food are less than the required percentage 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 the required percentage. 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.

(4) bar establishment licensees with a Fraternal classification as of July 1, 2013 may allow guests that are over 21 without a host as long as long as the practice is allowed in the bylaws of the Fraternal and the Fraternal maintains at least 60% of its total business from the sale of food pursuant to Section 32B-6-407(10)(c)(i-iii).

(a) The Fraternal shall notify the department of the intent to allow guests without a host by providing a copy of the bylaws.

(b) The Fraternal 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.

(c) If any inspection or audit discloses that the sales of food are less than 60% 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 60%. 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 if the Fraternal may continue to allow guests without a host.

R81-5-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a bar establishment 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-6-405 (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 as the type of bar establishment license requested on the application, evidence of proximity to certain community locations, evidence that the applicant meets the requirements for the type of bar establishment license for which the person is applying, evidence that a variety of food is prepared and served in connection with dining accommodations, a bond, a floor plan, public liability and liquor liability insurance, and if an equity or fraternal a copy bylaws or house rules and any amendment to those records); and

(b) the department has inspected the bar establishment premises.

(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.

R81-5-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-405(5) 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.

R81-5-4. Insurance.

Public liability and dram shop insurance coverage required in Subsections 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.

R81-5-6. Bar Establishment Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a bar establishment 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.

R81-5-7. Bar Establishment Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-406(4). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-5-8. Sale and Purchase of Alcoholic Beverages.

(1) 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.

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

R81-5-9. 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 club as approved by the department.

R81-5-10. Alcoholic Product Flavoring.

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the bar establishment 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 bar establishment employee under the age of 21 years may handle alcoholic product flavorings.

R81-5-11. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer. A copy shall be kept on the bar establishment premises and available at all times for examination by patrons of the bar establishment.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

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

(4) 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.

R81-5-12. 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.

R81-5-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed bar establishment, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire bar establishment is closed to regular patrons for the private event, or

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

R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202(1)(C)(i)general licensing procedures and 32B-6-405(2) for issuing an equity or fraternal bar establishment licenses.

(2) Purpose. This rule furthers the intent of 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R81-5-15. Minors in Lounge or Bar Areas.

(1) Pursuant to 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, or fraternal bar establishment. A minor may not be on the premises of a bar license except to the extent allowed under 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a bar license.

(2) "Lounge or bar area" includes:

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

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

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

(3) A minor who is otherwise permitted to be on the premises of an equity, or fraternal may momentarily pass through the lounge or bar area en route to those areas where the minor is permitted to be. However, no minor shall remain or be seated in the bar or lounge area.

KEY: alcoholic beverages
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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(6)(a)(ii) that requires:

(a) an off-premise beer retailer to prominently display a sign in each 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(6)(a)(ii) must be:

(A) prominently posted in all areas where beer is sold;

(B) easily readable by the consumer;

(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-2-202(1)(c) which requires the commission to set policy by written rules that establishes criteria and for issuing and denying licenses.

(2) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a license until in accordance with 32B-7-404(2):

(a) The applicant has submitted a complete application to the department in accordance with 32B-7-402; and

(b) the department has completed an investigation pursuit to 32B-7-404(1) and inspected the proposed licensed premises.

(c) A "complete application" includes the department's application form and all supplemental materials listed on the department's application checklist.

(3)(a) All application requirements of Subsection (2)(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 (2)(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 (3)(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 (2)(a) does not preclude the commission from considering an application for a conditional license under the terms and conditions of 32B-7-406.

KEY: alcoholic beverages
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32B-7-401

R81. Alcoholic Beverage Control, Administration.
R81-10A. Recreational Amenity On-Premise Beer Retailer Licenses.
R81-10A-1. Definitions.

(1) "Recreational Amenity" is one or more of the following or an activity substantially similar to one of the following:

(a) a billiard parlor;
(b) a pool parlor;
(c) a bowling facility;
(d) a golf course;
(e) miniature golf;
(f) a golf driving range;
(g) a tennis club;
(h) a sports facility that hosts professional sporting events and has a seating capacity equal to or greater than 6,500;
(i) a concert venue that has a seating capacity equal to or greater than 6,500;
(j) one of the following if owned by a government agency:
(i) a convention center;
(ii) a fair facility;
(iii) an equestrian park;
(iv) a theater; or
(v) a concert venue;
(k) an amusement park:
(i) with one or more permanent amusement rides; and
(ii) located on at least 50 acres;
(l) a ski resort;
(m) a venue for live entertainment if the venue:
(i) is not regularly open for more than five hours on any day;
(ii) is operated so that food is available whenever beer is sold, offered for sale, or furnished at the venue; and
(iii) is operated so that no more than 15% of its total annual receipts are from the sale of beer; or
(n) concessions operated within the boundary of a park administered by the:
(i) Division of Parks and Recreation; or
(ii) National Parks Service.

R81-10A-2. Licensing.

(1) Recreational amenity on-premise beer retailer 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.

R81-10A-3. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a recreational amenity on-premise beer retailer 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-6-705 (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 as a recreational amenity on-premise beer retailer license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the retailer sells more than $5000 of beer annually); and

(b) the department has inspected the recreational amenity on-premise beer retailer 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.

R81-10A-4. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-705(4) may be withdrawn during the time the license is in effect. If the recreational amenity on-premise beer 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.

R81-10A-5. 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.

R81-10A-6. 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.

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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) 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-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".

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R81. Alcoholic Beverage Control, Administration.
R81-10D. Tavern Beer Licenses.
R81-10D-1. Licensing.

(1) Tavern beer 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.

R81-10D-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a tavern 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-6-703 and -705 (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 as a tavern beer license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the tavern sells more than $5000 of beer annually); and

(b) the department has inspected the tavern 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.

R81-10D-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-705(4) may be withdrawn during the time the license is in effect. If the tavern beer 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.

R81-10D-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.

R81-10D-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.

KEY: alcoholic beverages
December 24, 2018 32-1-607
Notice of Continuation September 28, 2016 32B-2-202
32B-5
32B-6-701 through 708

R156. Commerce, Occupational and Professional Licensing.
R156-15. Health Facility Administrator Act Rule.
R156-15-101. Title.

This rule is known as the "Health Facility Administrator Act Rule".

R156-15-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 15, as used in this rule:

(1) "Administrator in training (AIT)" means an individual who is participating in a preceptorship with a licensed health facility administrator.

(2) "Board" means the Health Care Administrators Board.

(3) "Distance learning" means acquiring continuing professional education (CPE) as referenced in Section R156-15-309 using technologies and other forms of learning, including internet, audio/visual recordings, mail, or other correspondence.

(4) "General administration" as used in the definition of "administrator", Subsection 58-15-2(1), means that the administrator is responsible for operation of the health facility in accordance with all applicable laws regardless of whether the administrator is present full or part time in the facility or whether the administrator maintains an office inside or outside of the facility, but may not exceed responsibility for more than the number of licensed facilities in accordance with Utah Administrative Code R432-150 or R432-200.

(5) "General supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(6) "NAB" means the National Association of Long Term Care Administrators Boards.

(7) "Nursing home administrator" means a health facility administrator.

(8) "Preceptor" means a licensed health facility administrator meeting the qualifications of Subsection R156-15-307(2), who is responsible for the supervision and training of an AIT.

(9) "Preceptorship" means a formal training program for an administrator in training (AIT), that is:

(a) conducted in a licensed health facility;

(b) under the supervision of an approved licensed health facility administrator; and

(c) approved by the Division in collaboration with the Board.

(10) "Qualifying experience" means at least 8,000 hours of employment in a licensed health facility including hours in a supervisory role as referenced in Section R156-15-302c.

R156-15-103. 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 15.

R156-15-104. 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.

R156-15-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the application requirements for licensure in Section 58-15-4 are defined, clarified, or established as follows:

(1)(a) complete an approved AIT preceptorship consisting of a minimum of 1,000 hours; or

(b) hold a NAB Health Services Executive (HSE) credential; and

(2) meet:

(a) the education requirement in Section R156-15-302b; or

(b) the experience requirement in Section R156-15-302c.

R156-15-302b. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the education requirement for licensure in Subsection 58-15-4(2) is defined, clarified, or established as follows:

(1) The applicant shall graduate from an accredited university or college with a minimum of a baccalaureate degree.

(2) Up to 500 hours spent in an internship, practicum, or outside study program associated with a bachelor's degree in health facility administration or health care administration may be included as part of an approved AIT preceptorship as outlined in Section R156-15-307.

R156-15-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-1-203(1)(b) and 58-1-301(3), the experience requirement for licensure in Subsection 58-15-4(2) is defined, clarified, or established as follows:

(1) The applicant shall complete at least 8,000 hours of qualifying experience approved by the Division in collaboration with the Board.

(2) At least 4,000 hours of the qualifying experience shall be in a supervisory role.

(3) Subsection (1) may include up to 500 hours of an approved AIT preceptorship as outlined in Section R156-15-307, and if in a supervisory role may be included as part of Subsection (2).

R156-15-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirement for licensure in Subsection 58-15-4(4) is defined, clarified, or established as follows:

(1) An applicant for licensure as a health facility administrator shall pass NAB's two-part component examination for nursing home administrators:

(a) the National Core of Knowledge Examination for Long Term Care Administrators (CORE); and

(b) the National Nursing Home Administrator Line of Service Examination Program (NHA).

(2) The passing score for each NAB exam component shall be a minimum scaled score of 113.

(3) An applicant may take both NAB exam components at once, or take each component individually.

(4) An applicant who fails a NAB exam component shall retake that component in accordance with NAB policies and procedures.

(5) An applicant who took the NAB exam prior to July 5, 2017, shall have passed the NAB National Nursing Home Administrator Licensing Examination (NHA) with a minimum scaled score of 113.

R156-15-303. Expiration, Renewal, and Reinstatement of License.

In accordance with Section 58-1-308:

(1) The renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 15 is established by rule in Section R156-1-308a(1).

(2) Renewal and reinstatement procedures shall be in accordance with Sections R156-1-308a through R156-1-308l, except as provided in Subsection (3).

(3) If an application for reinstatement of licensure is received by the Division between two years and five years after the date the license expired, and the license was active and in good standing at the time of expiration, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with all requirements and conditions of license renewal;

(b) pay the established license renewal fee and

reinstatement fee for the current renewal period;

(c) submit evidence of completion of continuing professional education (CPE) for each preceding renewal period in which the license was expired; and

(d) provide information requested by the Division and Board to clearly demonstrate the applicant is currently competent to engage in the profession.

R156-15-307. AIT Preceptorship.

(1) A preceptor shall be allowed to supervise no more than two AIT preceptees at a time.

(2) In order to be approved as a preceptor, the health facility administrator shall:

(a) have been licensed for three years;

(b) be currently licensed and in good standing in Utah; and

(c)(i) be currently working in a licensed health facility; or

(ii) be currently working in an executive position related to a licensed health facility.

(3) The AIT preceptee shall at all times be under the general supervision of the preceptor.

(4) The AIT preceptee may work in the facility either full or part time while completing the preceptorship requirements. Credit received for an AIT preceptorship training shall be earned only for duties related to AIT preceptorship training as set forth under Subsection (5).

(5) An approved AIT preceptorship shall include the following:

(a) Patient care including:

(i) health maintenance;

(ii) social and psychological needs;

(iii) food service program;

(iv) medical care;

(v) recreational and therapeutic recreational activities;

(vi) medical records;

(vii) pharmaceutical program; and

(viii) rehabilitation program;

(b) Personnel management including:

(i) grievance procedures;

(ii) performance evaluation system;

(iii) job descriptions/performance standards;

(iv) interview and hiring procedures;

(v) training program;

(vi) personnel policies and procedures; and

(vii) employee health and safety program;

(c) Financial management including:

(i) developing a budget;

(ii) financial planning

(iii) cash management system; and

(iv) establishing accurate financial records;

(d) Marketing and public relations including

(i) planning and implementing a public relations program; and

(ii) planning and implementing an effective marketing program;

(e) Physical resource management including:

(i) ground and codes, building maintenance;

(ii) sanitation and housekeeping procedures;

(iii) compliance with fire and life safety codes;

(iv) security; and

(v) fire and disaster plan;

(f) Laws and regulatory codes including:

(i) knowledge of Medicaid and Medicare;

(ii) labor laws;

(iii) knowledge of building, fire and life safety codes;

(iv) OSHA/UOSHA;

(v) Bureau of Health Facility Licensure Law and Rule;

(vi) licensing and certification/professional licensing boards;

(vii) Health Facility Administrator Law and Rule;

(viii) tax laws; and

(ix) establishing or working with a governing board.

R156-15-308. License By Endorsement.

In accordance with Section 58-1-302 and Subsection 58-15-4(6), the Division may grant a license by endorsement to an applicant who:

(1) is currently a licensed health facility administrator in good standing in another state; and

(2) meets the examination requirement in Section R156-15-302d; and

(3) meets one or more of the following equivalent education or experience requirements:

(a) has been employed as a health facility administrator in another state for three years;

(b) has been employed as a health facility administrator at the same facility in another state for two consecutive years; or

(c) holds a Health Services Executive (HSE) qualification from the National Association of Long Term Care Administrator Boards (NAB).

R156-15-309. Continuing Education.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), the following continuing professional education requirements ("CPE") are established as a condition for renewal or reinstatement of licenses under Title 58, Chapter 15:

(1) During each two-year period commencing on June 1 of each odd-numbered year, a licensee shall complete at least 40 hours of CPE directly related to the licensee's professional practice.

(2) If a licensee first becomes licensed during the two-year renewal period, the licensee's required number of CPE hours shall be decreased proportionately according to the date of licensure.

(3) All CPE shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a health facility administrator;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have a competent method of registration of individuals who actually completed the professional education program, with records of that registration and completion available for review.

(4) The following may qualify as CPE:

(a) education obtained from an accredited university or college in pursuit of an advanced degree;

(b) lecturing or instructing a CPE course or teaching in a college or university in the licensee's profession;

(c) education under the sponsorship of or approved by a licensing agency of Utah or another state;

(d) real-time, interactive distance learning courses that are clearly documented as real-time and interactive;

(e) distance learning courses that are not real-time and interactive, up to a maximum of 20 CPE hours;

(f) volunteer service on boards, committees, or in leadership roles in any state, national, or international organization for the development and improvement of the licensee's profession, up to a maximum of 10 CPE hours.

(5) A licensee shall maintain adequate documentation as proof of the licensee's compliance with this section, for a period of four years after the end of the renewal cycle for which the CPE is due.

(6) The Division may defer or waive CPE requirements in accordance with Section R156-1-308d, for a period of up to

three years.

KEY: licensing, health facility administrators
December 10, 2018 58-1-106(1)(a)
Notice of Continuation August 25, 2016 58-1-202(1)(a)
58-15-3(3)

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) "Professional entry degree", as used in Subsection 58-17b-303(1)(f), means the professional entry degree offered by

the applicant's ACPE-accredited school or college of pharmacy in the applicant's year of graduation, either a baccalaureate in pharmacy (BSPharm) or a doctorate in pharmacy (PharmD).

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

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

(52) "Refill" means to fill again.

(53) "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.

(54) "Research facility" means a facility where research takes place that has policies and procedures describing such research.

(55) "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.

(56) "Self-administered hormonal contraceptive" means the same as defined in Subsection 26-62-102(9).

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

(58) "Supervisor" means a licensed pharmacist or DMP in good standing with the Division.

(59) "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.

(60) "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.

(61) "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.

(62) "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.

(63) The "Utah Hormonal Contraceptive Self-screening Risk Assessment Questionnaire", adopted September 18, 2018, by the Division in collaboration with the Utah State Board of Pharmacy and Physicians Licensing Board, as posted on the Division's website, is the self-screening risk assessment questionnaire approved by the Division pursuant to Section 26-62-106.

(64) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 41-NF 36), either First Supplement, dated August 1, 2018, or Second Supplement, dated December 1, 2018, which is hereby adopted and incorporated by reference.

(65) "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.

(66) "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 according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Key Elements for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree, effective July 1, 2016 ("Standards 2016"), which is hereby incorporated by reference.

(b) 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.

(c) 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 three times 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)(i) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure;

(ii) enrolled in a pharmacy graduate residency or fellowship program; or

(iii) licensed in good standing to practice pharmacy in another state or territory of the United States;

(b) submits 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 three times; or

(c) the date upon which the Division issues the individual full licensure.

(3) An individual who has failed either examination three times 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, but may be extended up to six months, as approved by the Division in collaboration with the Board.

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. Term, Expiration, Renewal, and Reinstatement of License - Application Procedures.

In accordance with Sections 58-1-308 and 58-17b-506:

(1) The renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 17b is established in Section R156-1-308a.

(2) Renewal and reinstatement procedures shall be in accordance with Sections R156-1-308a through R156-1-308l, except as provided in Subsection (3).

(3) An applicant whose license was active and in good standing at the time of expiration may apply for reinstatement between two years and eight years after the date of expiration, in accordance with the following practice re-entry requirements:

(a) Each applicant shall:

(i) submit a reinstatement application demonstrating compliance with all requirements and conditions of license renewal;

(ii) pay all license renewal and reinstatement fees for the current renewal period; and

(iii) comply with any additional licensure requirements or conditions considered necessary by the Division in collaboration with the Board to protect the public and ensure the applicant is currently competent to engage in the profession, such as:

(A) a background check;

(B) conditional licensure;

(C) refresher or practice re-entry programs;

(D) licensure exams;

(E) supervised practice requirements;

(F) fitness for duty/competency evaluations; or

(G) any other licensure requirements or conditions determined necessary by the Division in collaboration with the Board.

(b) An applicant applying between two and five years after expiration shall also:

(i) if requested, meet with the Board for evaluation of the applicant's qualifications for licensure; and

(ii) submit evidence that the applicant has successfully completed:

(A) all continuing education for each preceding renewal period in which the license was expired; or

(B) a refresher or practice re-entry program approved by the Division in collaboration with the Board.

(c) An applicant applying five or more years after expiration shall also:

(i) meet with the Board for evaluation of the applicant's qualifications for licensure;

(ii) submit evidence that the applicant has:

(A) within five years preceding the application, passed the examinations required for licensure under Section R156-17b-303c (NABPLEX and MPJE for a pharmacist, or PTCB or ExCPT for a pharmacy technician); or

(B) successfully completed a refresher or practice re-entry program approved by the Division in collaboration with the Board; and

(iii) successfully practice under conditional licensure during a period of direct supervision by a pharmacist, for a period equal to at least 40 hours of supervision for each expired year.

(4) The Division in collaboration with the Board may approve extension of an intern license upon the request of the licensee, if the intern lacks the required number of internship hours for licensure.

R156-17b-309. Continuing Education.

In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), the continuing education (CE) requirements for renewal or reinstatement of a pharmacist or pharmacy technician license for each two-year renewal cycle are established as follows:

(1) A pharmacist shall complete at least 30 CE hours, which shall include at minimum:

(a) 12 hours of live or technology-enabled participation in lectures, seminars, or workshops;

(b) 15 hours of disease state management/drug therapy, AIDS/HIV therapy, or patient safety;

(c) one hour of pharmacy law or ethics;

(d) if providing immunization administration as defined in R156-17b-621, two hours in immunization or vaccine-related topics;

(e) if providing administration of long-acting injectable drug therapy as defined in Section R156-17b-621a, two hours in topics related to long-acting injectables; and

(f) if dispensing a self-administered hormonal contraceptive in accordance with Title 26, Chapter 62, Family Planning Access Act, two hours in topics related to hormonal contraceptive therapy.

(2)(a) A pharmacy technician shall complete at least 20 CE hours, which shall include at minimum:

(i) six hours of live or technology-enabled participation at lectures, seminars, or workshops; and

(ii) one hour of pharmacy law or ethics.

(c) Current PTCB or ExCPT certification shall fulfill all CE requirements for a pharmacy technician.

(3)(a) If a licensee first becomes licensed during the two-year renewal cycle, the licensee's required number of CE hours shall be decreased proportionately according to the date of licensure.

(b) The Division may defer or waive CE requirements as provided in Section R156-1-308d.

(4) CE credit shall be recognized as follows:

(a) One live CE hour for attending one Utah State Board of Pharmacy meeting, up to a maximum of two CE hours during each two-year period. These hours may count as "pharmacy law or ethics" hours.

(b) Two CE hours for each hour of lecturing or instructing a CE course or teaching in the licensee's profession, up to a maximum of ten CE hours during each two-year period. The licensee shall document the course's content and intended audience (e.g., pharmacists, pharmacy technicians, pharmacy interns, physicians, nurses). Public service programs, such as presentations to schoolchildren or service clubs, are not eligible for CE credit.

(c) All CE shall be approved by, conducted by, or under the sponsorship of one of the following:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an ACPE-approved institution, individual, organization, association, corporation, or agency;

(ii) programs approved by health-related CE approval organizations, provided the CE is nationally recognized by a healthcare accrediting agency and is related to the practice of pharmacy;

(iii) Division training or educational presentations;

(iv) educational meetings that meet ACPE criteria and are sponsored by the Utah Pharmacy Association, the Utah Society of Health-System Pharmacists, or other professional organization or association; and

(v) for pharmacists, 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 collaboration with the Board.

(5) A licensee shall maintain documentation sufficient to prove compliance with this section, for a period of four years after the end of the renewal cycle for which the CE is due, by:

(a) maintaining registration with the NABP e-Profile CPE Monitor plan or the NABP CPE Monitor Plus plan; and

(b) maintaining a certificate of completion or other adequate documentation for any CE that cannot be tracked by the licensee's NABP plan.

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) failing to act in accordance with Title 26, Chapter 62, Family Planning Access Act, when dispensing a self-administered hormonal contraceptive under a standing order, in violation of Subsection 58-17b-502(14):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(28) violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):
initial offense: $250 - $500
subsequent offense(s): $2,000 - $10,000
(29) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):
initial offense: $250 - $500
subsequent offense(s): $500 - $750
(30) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(31) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(32) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):
initial offense: $50 - $100
subsequent offense(s): $200 - $300
(33) defaulting on a student loan, in violation of Subsection R156-17b-502(5):
initial offense: $100 - $200
subsequent offense(s): $200 - $500
(34) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):
initial offense: $500 - $1,000
subsequent offense(s): $2,000 - $10,000
(35) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(36) failing to return a self-inspection report according to the deadline established by the Division, or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):
initial offense: $100 - $250
subsequent offense(s): $300 - $500
(37) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):
initial violation: $50 - $100
failure to comply within determined time: $250 - $500
subsequent violations: $250 - $500
failure to comply within established time: $750 - $1,000
(38) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(39) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(40) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):
Pharmacist initial offense: $100 - $250
Pharmacist subsequent offense(s): $500 - $2,500
Pharmacy initial offense: $250 - $1,000
Pharmacy subsequent offense(s): $500 - $5,000
(41) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):
Pharmacist initial offense: $50 - $100
Pharmacist subsequent offense(s): $250 - $500
Pharmacy initial offense: $250 - $500
Pharmacy subsequent offense(s): $1,000 - $2,000
(42) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):
Pharmacy personnel initial offense: $500 - $2,500
Pharmacy personnel subsequent offense(s): $5,000 - $10,000
Pharmacy: $2,000 per occurrence
(43) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):
Double the original penalty amount up to $10,000

(44) failing to comply with the PIC 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
(45) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):
initial offense: $500 - $2,500
subsequent offense: $5,000 - $10,000
(46) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):
initial offense: $100 - $500
subsequent offense: $200 - $1,000
(47) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):
initial offense: $100 - $500
subsequent offense: $200 - $1,000
(48) failing to provide PIC 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
(49) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):
initial offense: $500 - $2,000
subsequent offense: $2,000 - $10,000
(50) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):
Pharmacist initial offense: $100 - $300
Pharmacist subsequent offense(s): $500 - $1,000
Pharmacy initial offense: $250 - $500
Pharmacy subsequent offense(s): $500 - $1,250
(51) practicing or attempting to practice as a pharmacist, pharmacist intern, 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
(52) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(53) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(54) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(55) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):
initial offense: $100 - $2,000
subsequent offense(s): $2,000 - $10,000
(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A)and 58-1-501(2)(m)(i):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(57) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B)and 58-1-501(2)(m)(ii):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(58) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):
initial offense: $100 - $2,000
subsequent offense(s): $2,000 - $10,000
(59) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(60) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(61) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(62) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern, 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
(63) 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
(64) 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
(65) 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
(66) 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
(67) 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

(68) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):
initial offense: $100 - $1,000
subsequent offense(s): $500 - $2,000
(69) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(70) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(71) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(72) practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501 (2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(73) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "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
(74) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(75) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(76) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(77) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:
initial offense: $1,000 - $5,000
subsequent offense(s) $5,000 - $10,000
(78) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance 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
(79) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(80) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(81) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action 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
(82) 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
(83) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(84) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(85) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(86) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(87) any other conduct that constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(88) 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.

(8) A pharmacist or pharmacy intern who dispenses a self-administered hormonal contraceptive shall obtain a completed Utah Hormonal Contraceptive Self-Screening Risk Assessment Questionnaire and provide written information and counseling as described in Section 26-62-106.

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-621b. Operating Standards - Pharmacist and Pharmacy Intern Dispensing of a Self-Administered Hormonal Contraceptive - Training.

In accordance with Subsection 58-17b-502(14) and Section 26-62-106:

(1) Prior to dispensing a self-administered hormonal contraceptive, a pharmacist or pharmacy intern shall successfully complete a training program for dispensing self-administered hormonal contraceptives that is provided by an ACPE-accredited provider and approved by the Division in collaboration with the Board.

(2) A pharmacist or pharmacy intern who engages in the dispensing of a self-administered hormonal contraceptive shall:

(a) maintain documentation that the required training was obtained prior to any dispensing; and

(b) for each renewal cycle after the initial training, successfully complete a minimum of two hours of continuing education related to dispensing a self-administered hormonal contraceptive, in accordance with Section R156-17b-309.

(3) The Utah Hormonal Contraceptive Self-screening Risk Assessment Questionnaire, adopted September 18, 2018, posted on the Division's website, is the self-screening risk assessment questionnaire to be used for pharmacist and pharmacy intern dispensing of self-administered hormonal contraceptives.

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

December 27, 2018	**58-17b-101**
Notice of Continuation January 5, 2015	**58-17b-601(1)**
	58-37-1
	58-1-106(1)(a)
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-20a. Environmental Health Scientist Act Rule.
R156-20a-101. Title.

This rule is known as the "Environmental Health Scientist Act Rule."

R156-20a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 20a, as used in Title 58, Chapters 1 and 20a or this rule:

(1) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(2) "Qualified professional continuing education," as used in this rule, means professional continuing education that meets the standards set forth in Section R156-20a-304.

(3) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 20a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-20a-502.

R156-20a-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 20a.

R156-20a-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.

R156-20a-302. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-20a-302 and whether the applicant has been involved in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) A criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, may disqualify an applicant from becoming licensed.

(b) Other criminal history is relevant, including as to the following:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

(6) A person whose moral character is subject to review under this Section R156-20a-302 is not guaranteed licensure after allowing a specified period of time to pass after conviction.

R156-20a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-20a-102(1)(b) and 58-20a-302(1)(d) and (2)(d), an applicant for licensure shall satisfy the education requirement as follows:

(1) The applicant shall submit evidence of a bachelor's degree or higher from:

(a) an environmental health program accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC);

(b) an accredited program with major study in one of the following:

(i) agronomy;
(ii) biology;
(iii) botany;
(iv) chemistry;
(v) civil engineering;
(vi) environmental health;
(vii) environmental science;
(viii) environmental studies;
(ix) geology;
(x) microbiology;
(xi) physics;
(xii) physiology;
(xiii) sanitary engineering;
(xiv) sustainability studies;
(xv) zoology; or
(xvi) coursework approved by the Division in collaboration with the Board; or

(c) an accredited program that includes:

(i) a college or university level algebra or math course; and

(ii) 30 semester hours or 45 quarter hours from at least three of the areas of study listed in Subsection (1)(b).

(2) If the applicant's degree was earned at an institution, college, or university not accredited by the Department of Education or the Council for Higher Education Accreditation (such as in a foreign country), the applicant shall submit evidence of the education's equivalency to Department of Education-accredited programs, as determined by:

(a) Academic Evaluation Services, Inc;

(b) Josef Silny and Associates, Inc.; or

(c) a credentialing agency approved by the Division in collaboration with the Board.

(3) An applicant may satisfy deficiencies in coursework by completion of additional hours of approved coursework at an institution, college, or university accredited by the Department of Education or the Council for Higher Education Accreditation, as approved by the Division in collaboration with the Board.

R156-20a-302b. Qualifications for Licensure - Examination Requirement.

(1) In accordance with Subsection 58-20a-302(1)(e), an applicant shall satisfy the examination requirement by submitting evidence of having passed the National Environmental Health Association Registered Environmental Health Specialist/Registered Sanitarian (REHS/RS) Examination or the National Environmental Health Association Registered Environmental Health Specialist/Registered Sanitarian-in-training Examination.

(2) An applicant may take either examination identified in Subsection (1) upon completion of the education requirements listed in Section R156-20a-302a.

R156-20a-302c. Qualifications for Licensure - Supervision

Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-20a-302(3)(f), an applicant when licensed as an environmental health scientist-in-training shall practice under the general supervision of a supervising licensed environmental health scientist for a minimum of six months, except for an applicant who has completed an environmental health science program accredited by EHAC as set forth in Subsection R156-20a-302a(1).

R156-20a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 20a is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-20a-304. Professional Continuing Education.

(1) In accordance with Section 58-20a-304, during each two year period commencing June 1 of each odd numbered year, an environmental health scientist or environmental health scientist-in-training shall be required to complete not less than 30 hours of qualified professional continuing education directly related to the licensee's professional practice.

(2) The required number of hours of professional continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Qualified professional continuing education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a environmental health scientist;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(4) Credit shall be recognized for professional continuing education on an hour for hour basis as a student completed in blocks of time of not less than 50 minutes in formally established classroom courses, distance learning, seminars, lectures, labs, or specific environmental conferences approved, taught or sponsored by:

(a) Utah Environmental Health Association;

(b) Bureau of Environmental Services;

(c) Utah Department of Environmental Quality;

(d) Bureau of Epidemiology;

(e) State Food Program;

(f) National Environmental Health Association;

(g) Food and Drug Administration;

(h) Center for Disease Control and Prevention;

(i) any local, state or federal agency; and

(j) a college or university which provides courses in or related to environmental health science.

(5) A maximum of 15 hours of credit may be recognized for a person who teaches continuing professional education on an hour for hour basis completed in block of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences which meet the requirements in Subsections (3) and (4).

(6) A licensee is responsible for maintaining competent records of completed qualified professional continuing education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(7) If properly documented that a licensee is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-20a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to comply with the professional continuing education requirements in Section R156-20a-304; and

(2) failing to provide general supervision as defined in Subsection 58-20a-102(2).

KEY: licensing, environmental health scientist, sanitarian, environmental health scientist-in-training

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Notice of Continuation April 27, 2015	**58-1-202(1)(a)**
	58-20a-101

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 theft, including diversion, or significant loss 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.

KEY: controlled substances, licensing
December 27, 2018 **58-1-106(1)(a)**
Notice of Continuation February 6, 2017 **58-37-6(1)(a)**
58-37f-301(1)

R156. Commerce, Occupational and Professional Licensing.
R156-37f. Controlled Substance Database Act Rule.
R156-37f-101. Title.

This rule shall be known as the "Controlled Substance Database Act Rule".

R156-37f-102. Definitions.

In addition to the definitions in Sections 58-17b-102, 58-37-2 and 58-37f-102, as used in this chapter:

(1) "ASAP" means the American Society for Automation in Pharmacy system.

(2) "DEA" means Drug Enforcement Administration.

(3) "EDS" means "electronic data system" as defined in Subsection 58-37f-303(1)(c).

(4) "EHR" means electronic health record.

(5) "HIE" means health information exchange.

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

(7) "NCPDP" means National Council for Prescription Drug Programs.

(8) "NDC" means National Drug Code.

(9) "Null report" means the same as zero report.

(10) "ORI" means Originating Agency Identifier Number.

(11) "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.

(12) "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.

(13) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

(14) "Rx" means a prescription.

(15) "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 sold.

(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 sold.

(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-in-charge and 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) reporting pharmacy's:

(i) National Provider Identifier (PHA01); and

(ii) identifier assigned by NCPDP/NABP (PHA02), or if none, then DEA registration number (PHA03);

(j) patient last name (PAT07);

(k) patient first name (PAT08);

(l) patient address (PAT12);

(m) patient city of residence (PAT14);

(n) patient zip code (PAT 16);

(o) patient date of birth (PAT18);

(p) dispensing status - new, revised, or void (DSP01);

(q) prescription number (DSP02);

(r) date prescription written by prescriber (DSP03);

(s) number of refills authorized by prescriber (DSP04);

(t) date prescription filled at dispensing pharmacy (DSP05);

(u) if current dispensed prescription is a refill, the number of the refill being dispensed (DSP06);

(v) product identification qualifier (DSP07);

(w) NDC 11-digit drug identification number (DSP08);

(x) quantity of drug dispensed in metric units (DSP09);

(y) days supply dispensed (DSP10)

(z) date drug left the pharmacy, i.e. date sold (DSP17);

(aa) DEA registration number of prescribing practitioner (PRE02);

(bb) state that issued identification of individual picking up dispensed drug (AIR03);

(cc) type of identification used by individual picking up dispensed drug (AIR04);

(dd) identification number of individual picking up dispensed drug (AIR05);

(ee) last name of individual picking up dispensed drug (AIR07);

(ff) first name of individual picking up dispensed drug (AIR08);

(gg) dispensing pharmacist last name or initial (AIR09);

(hh) dispensing pharmacist first name (AIR10);

(ii) number of detail segments included for the pharmacy (TP01);

(jj) transaction control number (TT01); and

(kk) 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 pharmacist-in-charge and the pharmacist 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) date transaction created (TH05);

(d) time transaction created (TH06);

(e) file type (production or test) (TH07);

(f) segment terminator (TH09);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) date range (IS03);

(j) reporting pharmacy's:

(i) National Provider Identifier (PHA01); and

(ii) identifier assigned by NCPDB/NABP (PHA02), or if none, then DEA registration number (PHA03);

(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, D, or E 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 zero reports:

(a) The waiver or certification must be renewed 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 Database reporting requirements of Subsections 58-37f-203(1) and R156-37f-203(1) shall apply to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance; and

(iii) the pharmacy or pharmacy group shall notify the Division in writing of the waiver or certification termination within 24 hours or the next business day of the dispensing of the controlled substance, whichever is later.

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 written submission to the Database staff in accordance with the requirements of this section, if the requester is not registered to use the Database.

(b) A written request may be submitted by facsimile, email, regular mail, or in person except as otherwise provided herein.

(c) The Division shall require a requester to verify the requester's identity.

(4) The following Database information may be disseminated to a verified requester who is permitted to obtain the information:

(a) dispensing/reporting pharmacy ID number/name;

(b) subject's birth date;

(c) date prescription was sold;

(d) prescription (Rx) number;

(e) metric quantity;

(f) days supply;

(g) NDC code/drug name;

(h) prescriber ID/name;

(i) subject's last name;

(j) subject's first name; and

(k) 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)(m) shall provide a valid search warrant authorized by the courts, which may be provided using one of the following methods:

(i) in person;

(ii) email to csd@utah.gov;

(iii) facsimile; or

(iv) U.S. Mail.

(b) A search warrant may include the following information to assist in the search:

(i) for an individual for whom a controlled substance has been prescribed or dispensed, the subject's name and birth date;

(ii) for a prescriber who is the subject of the investigation, the prescriber's full name; and

(iii) the date range to be searched.

(c) Database information provided as a result of the search warrant shall be in accordance with Subsection (4) unless otherwise specified in the search warrant.

(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:

(A) name;

(B) complete address, including city and zip code; and

(C) ORI number;

(ii) a copy of the officer's driver's license;

(iii) the officer's:

(A) full name;

(B) contact phone number; and

(C) agency email address; and

(b) the online database account includes the officer's:

(i) full name;

(ii) agency 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) In accordance with Subsections 58-37f-301(2)(q) and

(r):

(a) An individual may:

(i) obtain the individual's own information and records contained within the Database; and

(ii) unless the individual's record is subject to a pending or current investigation authorized under Subsection 58-37f-301(2)(r), receive an accounting of persons or entities that have requested or received Database information about the individual, to include:

(A) the role of the person that accessed the information;

(B) the date range of the information that was accessed, if available;

(C) the name of the person or entity that requested the information; and

(D) the name of the practitioner on behalf of whom the request was made, if applicable.

(b) The individual may request the information by submitting an original signed and notarized request as furnished by the Division that includes:

(i) the individual's:

(A) full name, including all aliases;

(B) complete home address;

(C) telephone number; and

(D) date of birth;

(ii) a clearly legible, color copy of government-issued picture identification confirming the individual's identity; and

(iii) requested date range for the information.

(c) A third party may request information from the Database on behalf of an individual as provided in Subsection (7)(a), by submitting:

(i) an original signed and notarized request as furnished by the Division;

(ii) a clearly legible, color copy of government-issued picture identification confirming the requester's identity; and

(iii) an original, or certified copy, of properly executed legal documentation acceptable to the Database staff that the requester:

(A) is the individual's current agent under a power of attorney that:

(I) authorizes the agent to make health are decisions for the individual;

(II) allows the agent to have access to the patient's protected health information (PHI) under HIPAA; or

(III) otherwise grants the agent specific authority to obtain Database information on behalf of the individual;

(B) is the parent or court-appointed legal guardian of a minor individual;

(C) is the court-appointed legal guardian of an incapacitated adult individual; or

(D) has an original, signed, and notarized form for release of records from the individual in a format acceptable to the Database staff, that identifies the purpose of the release with respect to the Database.

(8) 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:

(i) the practitioner's:

(A) DEA number; and

(B) email address account registered with the Database; and

(ii) the designated employee's:

(A) full name;

(B) complete home address;

(C) e-mail address;

(D) date of birth;

(E) driver license number or state identification card number; and

(F) professional license number, if any; and

(iii) manual signatures from both the 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.

(9) 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 practitioner's:

(A) DEA number; and

(B) email address account registered with the Database;

(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;

(E) driver license number or state identification card number; and

(F) professional license number, if any;

(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.

(10) An individual who is employed in the emergency department 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(4)(a) if, prior to making the request:

(a) the practitioner and the hospital operating the emergency department have provided to the Division a written designation that includes:

(i) the practitioner's:

(A) DEA number; and

(B) email address account registered with the Database;

(ii) the name of the hospital; and

(iii) the designated employee's:

(A) full name;

(B) complete home address;

(C) e-mail address;

(D) date of birth;

(E) driver license number or state identification card number; and

(F) professional license number, if any;

(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.

(11) 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) To request that the Division begin providing notice to a third party, or to request that the Division discontinue providing notice to a third party, the individual shall submit an original signed and notarized request form as furnished by the Division, that includes:

(i) the individual's:

(A) full name, including all aliases;

(B) birth date;

(C) complete home address including city and zip code;

(D) email address; and

(E) contact phone number;

(ii) a clearly legible, color copy of government-issued picture identification confirming the individual's identity; and

(iii) the designated third party's:

(A) full name;

(B) complete home address, including city and zip code;

(C) email address; and

(D) contact phone number.

(b) After receiving a request to discontinue third-party notice, 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) An individual may have up to three active designated third parties.

(12) 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.

(13) 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.

(14) 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 Division-approved Prescription Monitoring Program (PMP) Hub 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 (EDS), an EDS user must:

(a) register to use the database by creating an approved account established by the Division pursuant to a memorandum of understanding with the Division;

(b) use the unique user name and password associated with the account created for the EDS user 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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Notice of Continuation December 21, 2017 58-37f-301(1)

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "AARST-NRPP" means the National Radon Proficiency Program.

(2) "Construction trades instructor", as used in Subsection 58-55-301(2)(t) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(3) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(t) and as clarified in R156-55a-102(2).

(4) "Employee", as used in Subsections 58-55-102(13) and 58-55-102(18), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(5) "Incidental", as used in Subsection 58-55-102(45), means work which:

(a) can be safely and competently performed by a specialty contractor;

(b) arises from, and is directly related to, work performed in the licensed specialty classification;

(c) does not exceed 10 percent of the overall contract; and

(d) does not include performance of any electrical or plumbing work.

(6) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(7) "Mechanical", as used in Subsections 58-55-102(22) and 58-55-102(35), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(8) "NABCEP" means the North American Board of Certified Energy Practitioners.

(9) "NASCLA" means the National Association of State Contractors Licensing Agencies.

(10) "NRSB" means the National Radon Safety Board.

(11) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(12) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by satisfying the requirements to obtain the contractor or construction trades instruction facility license.

(13) "RMGA" means the Rocky Mountain Gas Association.

(14) "School" means a Utah school district, technical college, or accredited college.

R156-55a-103. Authority.

This rule is adopted by the Division under the authority of Subsections 58-1-106(1)(a) and 58-55-103(1)(b)(i) to enable the Division to administer Title 58, Chapter 55.

R156-55a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person engaged in work included in Subsections R156-55a-301(7) and (8) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(24).

B100 - General Building Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(22). The scope of practice includes the scope of practice of every specialty contractor in Subsection R156-55a-301(2) except:

(a) activities described in this Subsection under specialty classification E202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NABCEP; and

(b) activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor, unless:

(i) the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP; or

(ii) the work is limited to installation of passive radon gas controls on new construction in accordance with Appendix F of the International Residential Code.

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. The scope of practice:

(a) includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together, if required, and securing the modular units to the foundations; and

(b) excludes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(35). The scope of practice does not include:

(a) activities described in this Subsection under specialty classification E202 - Solar Photovoltaic Contractor, unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NABCEP; and

(b) activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor, unless:

(i) the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP; or

(ii) the work is limited to installation of passive radon gas controls on new construction in accordance with Appendix F of the International Residential Code.

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind with the restriction that:

(a) no change is made to the bearing portions of the existing structure, including footings, foundation, and weight bearing walls; and

(b) the entire project is less than $50,000 in total cost, including materials and labor.

R200 - Factory Built Housing Contractor. Disconnection,

setup, installation, or removal of manufactured housing on a temporary or permanent basis. The scope of work:

(a) includes placing the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connecting the utilities from the near proximity, such as a meter, to the manufactured housing unit, and construction of foundations of less than four feet six inches in height;

(b) excludes preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling, and grading around the foundation, construction of foundations of more than four feet six inches in height, and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A construction trades instruction facility authorized to teach the construction trades and subject to the scope of practice defined in Subsection 58-55-102(24).

I102 - General Building Trades Instruction Facility. A construction trades instruction facility authorized to teach the construction trades and subject to the scope of practice defined in Subsections 58-55-102(22) or 58-55-102(35).

I103 - Electrical Trades Instruction Facility. A construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(E200).

I104 - Plumbing Trades Instruction Facility. A construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(P200).

I105 - Mechanical Trades Instruction Facility. A construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

E200 - General Electrical Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(23). The scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP.

E201 - Residential Electrical Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(37). The scope of practice does not include activities described in this subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP.

E202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and replacement of photovoltaic modules and related components, subject to the following:

(a) An E202 Solar Photovoltaic Contractor shall hold a current certificate issued by NRSB or AARST-NRPP.

(b) Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an E200 General Electrical Contractor or E201 Residential Electrical Contractor.

(c) E202 Solar Photovoltaic Contractor licensure is not required to install standalone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or parking lighting.

(d) An E202 Solar Photovoltaic Contractor may subcontract with an E200 General Electrical Contractor or E201 Residential Electrical Contractor for their projects.

P200 - General Plumbing Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(25). The scope of practice:

(a) includes the furnishing of materials, fixtures, and labor to extend service from a building out to the main water, sewer, or gas pipeline; and

(b) does not include activities described under specialty classification S354-Radon Mitigation Contractor, unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP.

P201 - Residential Plumbing Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(42). The Residential Plumbing Contractor scope of practice does not include activities described in this subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP.

P202 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto in a closed system not connected to the culinary water system. If water delivery for the closed system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, a P202 Boiler Installation Contractor may connect the closed system to the backflow prevention device, but the device must be installed by an actively licensed plumber.

P203 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution systems for artificial watering or irrigation.

P204 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work. This classification includes the above work for geo thermal systems.

P205 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

P206 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

P207 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal, metal products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. Installation of overhead and garage doors and door openers.

S230 - Siding and Rain Gutter Contractor. Fabrication, construction, and/or installation of siding or rain gutters, roof flashings, gravel stops, and metal ridges.

S231 - Rain Gutter Installation Contractor. On-site fabrication and/or installation of rain gutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, glass substitutes, glass-holding members, frames, and hardware.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control, or fireproofing, but shall not include mechanical insulation of pipes, ducts, or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, injecting, spraying, resurfacing, sealing, and/or installation of concrete, grouting, coatings, sealant, and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, shoring material, placing and erection of bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but does not include the placement of concrete, finishing of concrete, or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementatious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementatious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster, and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile, and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of the above which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion; non-electrical skylights; and electrical skylights provided that the electrical connection is performed by a licensed electrical contractor. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor:

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, sprinkler systems, for closed systems not connected to the culinary water system, or, if water delivery for the closed system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, the contractor may connect the closed system to the backflow prevention device, if the backflow prevention device is installed by an actively licensed plumber;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non-natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non-natural fill materials are located;

(e) construction of patios, patio areas, and decking, including the deck structure and substructure;

(f) construction of hothouses, greenhouses, fences, walks, and garden lighting of 49 volts or less; and

(g) performing incidental concrete work related to any Landscaping Contractor scope of practice.

(h) This classification does not include any electrical or plumbing trade work.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating, air conditioning and ventilating

systems. The scope of practice does not include activities described under S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP. An HVAC Contractor may hire or subcontract an RMGA-certified licensed contractor for any gas-related work. The scope of practice does not include electrical trade work.

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees. The scope of practice does not include electrical trade work.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid. The scope of practice does not include electrical trade work.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system. The scope of permitted work does not include electrical trade work.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. Work performed under this classification shall be performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP. The scope of practice does not include:

(a) work on heat recovery ventilation or makeup air components that must be performed by an HVAC Contractor; or

(b) electrical trade work that must be performed by an Electrical Contractor.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment, including built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto. The scope of practice does not include the installation of gas fuel or electrical trade work.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed plumbing contractor. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. Fabrication, construction, and installation of swimming pools, prefabricated pools, spas, and tubs. The scope of practice:

(a) does not include plumbing or electrical trade work, but an S380 Swimming Pool and Spa Contractor may subcontract with a plumbing and electrical contractor for their projects;

(b) includes a closed system not connected to a culinary water system; and

(c) includes, if water delivery for a closed system is connected to a culinary water system and separated from the culinary water system by a backflow prevention device, connection of the closed system to the backflow prevention device (however, the backflow prevention device must be installed by an actively licensed plumber).

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, including asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. The scope of practice includes:

(a) excavation, grading, compacting, and laying of fill or base-related thereto; and

(b) painting on asphalt surfaces, including striping, directional, and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit, or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. The scope of practice includes the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA-certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions, subject to the following:

(a) "Signs and graphic displays" includes signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or product, building trim or lighting with neon or decorative fixtures, and any other animated, moving or stationary device used for advertising or identification purposes.

(b) Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code;

(c) The scope of practice does not include electrical trade work.

S441 - Non-Electrical Outdoor Advertising Sign Contractor. Installation of non-electric signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. "Non-electrical signs and graphics displays" means outdoor advertising signs that do not have electrical lighting or other electrical requirements, and that are fabricated, installed, and erected in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application, and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. Raising, cribbing, underpinning, moving, and removal of a building, structure, or matter appurtenant or incidental to any building or structure.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment, and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. Excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter, or repair piers, piles, footings, and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Flooring Contractor. Installation of laminate, tile, wood or wood product flooring, including prefinished and

unfinished material, sanding, staining and finishing of new and existing flooring, the underlayment, and non-structural subfloors.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including the underlayment, non-structural subfloors, and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes non-structural floor subsurface, nonstructural wall surface, perimeter walls, and perimeter fencing. Includes installation and attachment of equipment such as poles, basketball standards, or other equipment.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster, and other surfaces.

S700 - Limited Scope License Contractor.

(a) A limited scope license is a license that confines the scope of the allowable contracting work to a specialized area of construction, which the Division grants on a case-by-case basis.

(b) When applying for a limited scope license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform and an explanation why the scope of practice is not included in any other current classification; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(3)(a) A specialty license contractor, as defined in Subsection 58-55-102(45), shall be confined to the field and scope of work as outlined by the Division.

(b) A specialty license contractor may subcontract with a specialty license contractor that holds the same classification as the hiring contractor.

(4)(a) A licensee may hold up to three specialty license classifications, in addition to any general contractor classifications, except that an R101 Residential and Small Commercial Non-Structural Remodeling and Repair contractor may not have any other specialty classifications.

(b) A licensee may change classifications at any time by surrendering a license, and by applying for any license for which the licensee is qualified and as permitted by law.

(c) To qualify for licensure, an applicant for renewal or reinstatement shall surrender or replace the applicant's contractor classifications as needed to comply with Subsection (4)(a).

(5) Effective November 7, 2017:

(a) Contractor licenses shall only be issued to applicants or licensees in:

(i) primary classification listed in Subsection(6); or

(ii) primary or subclassifications of B200, R101, R200, E201, E202, P201, P202, P203, P204, P205, P206, P207, S240, S250, S280, S300, S310, S330, S340, S354, S360, S370, S380, S390, S400, S410, S430, S450, S460, S470, S480, S500, S510, S600, S700; or

(iii) a general contractor or facility classification listed in Subsection R156-55a-302a(2).

(b) Except for subclassifications listed in Subsection (5)(a)(ii), an application for renewal or reinstatement of a license with a subclassification listed in Subsection (6) shall be converted to the corresponding primary classification.

(6) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subsclassifications and a licensee with the following primary classification may subcontract with a licensee with an included subclassification:

TABLE I

Primary Classification	Included subclassifications
E200	E201, E202
P200	P201, P202, P203, P204, P205, P206, P207
S220	S221, S222
S230	S231
S260	S261, S262, S263
S270	S272, S273
S290	S291, S292, S293, S294
S320	S321, S322, S323
S350	S351, S352, S353, S354
S420	S421
S440	S441
S490	S491

(7) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

(a) sandblasting;

(b) pumping services;

(c) tree stump or tree removal;

(d) installation within a building of communication cables including phone and cable television;

(e) installation of low voltage electrical that is 49 volts or less;

(f) construction of utility sheds, gazebos, or other similar items which are personal property and not attached to:

(i) a residential or commercial building; or

(ii) a foundation;

(g) building and window washing, including power washing;

(h) central vacuum systems installation;

(i) concrete cutting;

(j) interior decorating;

(k) wall paper hanging;

(l) drapery and blind installation;

(m) welding on personal property which is not attached;

(n) chimney sweepers other than repairing masonry;

(o) carpet and vinyl floor installation;

(p) artificial turf installation;

(q) general cleanup of a construction site which does not include demolition or excavation;

(r) installation or removal of weather-stripping but does not include moisture vapor barriers;

(s) fabrication, installation, or removal of mirrors; and

(t) construction, installation, or removal of awnings and canopies, including attached or detached;

(u) pallet racking or metal shelving, whether attached or detached to the structure; and

(v) seismic strapping for pipes, appliances, and water heaters.

(8) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

(a) lead removal regulated by the Department of Environmental Quality;

(b) asbestos removal regulated by the Department of Environmental Quality; and

(c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), no examination is required for the qualifier of an applicant for licensure as a contractor or construction trades instruction facility except:

(a) an examination may be required as part of a 25-hour course described in Subsection 58-55-302(1)(e)(iii);

(b) an approved contractor classification examination required for the classifications listed in Subsection (2); and

(c) the Utah Contractor Business and Law Examination for the classifications listed in Subsection (2) and the P200, P201, E200, and E201 classifications.

(2) A contractor classification examination, given currently or in the past by the Division, or determined by the Division to be substantially equivalent, is required for the following contractor license classifications:

E100 - General Engineering Contractor

B100 - General Building Contractor

R100 - Residential and Small Commercial Contractor

I101 - General Engineering Trades Instruction Facility

I102 - General Building Trades Instruction Facility

(3) For the B100 or R100 classifications, a passing score on the NASCLA Accredited Examination for Commercial General Building Contractors shall satisfy the examination requirement.

(4) Except for the NASCLA exam described in Subsection (3), the passing score for all examinations is 70%.

(5) An applicant who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure, up to three failures; and

(b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) No experience is required for any contractor classification except those listed in Subsection R156-55a-302a(2).

(2) The experience requirements for all contractor license classifications listed in Subsection R156-55a-302a(2) are:

(a) Unless otherwise provided in this rule, two years of experience lawfully performed preceding the date of application under the general supervision of a contractor, and subject to the following:

(i) If the experience was completed in Utah, it shall be:

(A) completed while a W-2 employee of a licensed contractor; or

(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.

(ii) If the experience was completed outside of the state of Utah, it shall:

(A) be completed in compliance with the laws of the jurisdiction in which the experience is completed;

(B) not be considered qualifying experience if the construction activities in the other jurisdiction would be exempt from licensure in Utah; and

(C) be completed with supervision that is substantially equivalent to the supervision required in Utah.

(iii) Experience while performing construction activities in the miliary, regardless of licensure or Subsection (2)(a)(v), may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work.

(iv) Experience obtained while incarcerated is not qualifying experience.

(v) Experience obtained while exempt from licensure under Subsection 58-55-305(1) is not qualifying experience.

(vi) Experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractor's license.

(b) One year of work experience means 2,000 hours.

(c) No more than 2,000 hours of experience during any 12 month period may be claimed.

(d) If the applicant is unable to provide sufficient evidence of qualifying experience and the applicant's qualifying experience was previously approved in the state of Utah, a passing score on the contractor examination and the laws and rules examination obtained within the one-year period preceding the date of application will requalify the applicant's experience.

(3) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) One of the required two years of experience shall be in a supervisory or managerial position.

(b) A person holding a four-year bachelors degree or a two-year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(c) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(4) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for E202 Solar Photovoltaic Contractor. In addition to the requirements of Subsection (2), an applicant shall hold a current certificate by the NABCEP.

(6) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsection (2), an applicant shall hold a current certificate issued by the NRSB or the AARST-NRPP.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) An applicant as a qualifier for licensure as a I103 Electrical Trades Instruction Facility shall also be licensed as a master electrician or a residential master electrician.

(2) An applicant as a qualifier for licensure as a I104 Plumbing Trades Instruction Facility shall also be licensed as a master plumber or a residential master plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of liability insurance which provides coverage for the scope of work performed, in force for the entire duration of active licensure, and in coverage amounts of at least $100,000 for each incident and $300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by

building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

R156-55a-302f. Pre-licensure Education - Standards.

(1) Qualifier Education Requirement. The 25-hour pre-licensure course required by Subsection 58-55-302(1)(e)(iii) shall be completed by the qualifier for a contractor applicant.

(a) Any approved 20-hour pre-licensure course completed by the applicant before November 30, 2017 shall be accepted by the Division as satisfaction of the 25-hour pre-licensure course requirement in Subsection 58-55-302(1)(e)(iii).

(2) Program Pre-Approval. A pre-licensure course provider shall submit an application for approval as an approved pre-licensure course provider on the form provided by the Division. The applicant shall demonstrate compliance with Section R156-55a-302f.

(3) Eligible Providers. The following may be approved to provide pre-licensure courses:

(a) a nationally or regionally recognized accredited college or university having a physical campus located within the State of Utah; or

(b) a non-profit Utah construction trades association involved in the construction trades in the State of Utah:

(i) representing multiple construction classifications;

(ii) with membership of:

(A) at least 250 contractors licensed in Utah; or

(B) less than 250 members, if the association is:

(I) competent, as determined by the Commission and the Director according to their sole discretion; and

(II) compliant with all other standards of this rule; and

(iii) having five years of experience providing education to contractors in Utah.

(4) Content. The 25-hour course may include an exam at the end of the course for no additional fee, and shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:

(a) 15 hours of financial responsibility instruction that includes the following:

(i) record keeping and financial statements;

(ii) payroll, including:

(A) payroll taxes;

(B) worker compensation insurance requirements;

(C) unemployment insurance requirements;

(D) professional employer organization (employee leasing) alternatives;

(E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;

(F) employee benefits; and

(G) Fair Labor Standard Act;

(iii) cash flow;

(iv) insurance requirements including auto, liability, and health; and

(v) independent contractor licensure and exemption requirements;

(b) six hours of construction business practices that includes the following:

(i) estimating and bidding;

(ii) contracts;

(iii) project management;

(iv) subcontractors; and

(v) suppliers;

(c) two hours of regulatory requirements that includes the following:

(i) licensing laws;

(ii) Occupational Safety and Health Administration (OSHA);

(iii) Environmental Protection Agency (EPA); and

(iv) consumer protection laws; and

(d) two hours of mechanic lien fundamentals that include the State Construction Registry.

(5) Program Schedule.

(a) An approved pre-licensure course provider shall offer the 25-hour course:

(i) at least 12 times per year; and

(ii) comply with Subsection 58-55-102(7)(b).

(b) An approved pre-licensure course provider is not obligated to provide a course if the provider determines the enrollment is not sufficient to reach breakeven on cost.

(6) Program Instruction Requirements: The pre-licensure course shall meet the following standards:

(a) Time. Each hour of pre-licensure course credit shall consist of 50 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the course time for which course credit is issued.

(b) Learning Objectives. The learning objectives of the pre-licensure course shall be reasonably and clearly stated.

(c) Teaching Methods. The pre-licensure course shall be presented in a competent and well organized manner consistent with the stated purpose and objective of the program. The student must demonstrate knowledge of the course material.

(d) Faculty. The pre-licensure course shall be prepared and presented by individuals who are qualified by education, training or experience.

(e) Distance Learning. Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure course requirements.

(f) Registration and Attendance. The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.

(g) Education Curriculum and Study/Resource Guide. The provider shall be responsible to provide or develop pre-licensure course curriculum and study/resource guide for the pre-licensure course that must be pre-approved by the Commission and the Division prior to use by the provider.

(h) Live Broadcast. The pre-licensure education course may be taught by live broadcast if:

(i) the student and the instructor are able to see and hear each other; and

(ii) a representative of the provider is at any remote location to monitor registration and attendance at the course.

(7) Certificates of Completion. The pre-licensure course provider shall provide individuals completing the pre-licensure course a certificate that contains the following information:

(a) the date of the pre-licensure course;

(b) the name of the pre-licensure course provider;

(c) the attendee's name;

(d) verification of completion of the 25-hour requirement;

and

(e) the signature of the pre-licensure course provider.

(8) Reporting of Program Completion. A pre-licensure course provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms provided by the Division.

(9) Program Monitoring. On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure course for the purpose of evaluating the course and the instructor(s).

(10) Documentation Retention. Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:

(a) the dates of all pre-licensure courses that have been completed;

(b) registration and attendance logs of individuals who completed the pre-licensure course;

(c) the name of instructors for each course provided as a part of the program; and

(d) pre-licensure course handouts and materials.

(11) Disciplinary Proceedings. As provided in Section 58-1-401 and Subsection 58-55-302(1)(e)(iii), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any pre-licensure course provider, if the pre-licensure course provider fails to meet any of the requirements of this section or the provider has engaged in other unlawful or unprofessional conduct.

(12) Exemptions. In accordance with Subsection 58-55-302(1)(e)(iii), the following persons are not required to complete the pre-licensure course program requirements:

(a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;

(b) a person holding an active and unrestricted Utah professional engineer license who is applying for the E100 contractor license classification; or

(c) a person who:

(i) is a qualifier on an active and unrestricted contractor license;

(ii) became the qualifier on the license on or before October 9, 2014; and

(iii) is applying to:

(A) add additional contractor classifications to the license; or

(B) become a qualifier on a new entity that is applying for initial licensure.

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director, or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

(4) All contractors shall renew their license in an online form approved by the Division, except as permitted by the Division in writing.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete six hours of continuing education during each two-year license term. A minimum of three hours shall be core education; the remaining three hours may be professional education or core education. A minimum of three hours shall consist of live in-class attendance; the remaining three hours may consist of distance learning courses.

(a) Regular attendance by a commission member on the Construction Services Commission shall satisfy the member's continuing education requirements under Section 58-55-302.5.

(b) For an HVAC contractor licensee, at least three of the six hours described in Subsection (1) shall include continuing education directly related to the installation, repair, or replacement of a heating, ventilation, or air conditioning system.

(c) "Core continuing education" is defined as construction codes, construction laws, job site safety, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices, finance, bookkeeping, and construction business practices.

(d) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(e) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal and business motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(f) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall be among those specified in Subsection 58-55-302.5(2).

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review. Providers shall track the

following:

(i) the amount of time each student has spent in the course;

(ii) what activities the student did or did not access; and

(iii) all of the student's test scores.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate that contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

(i) Live Broadcast. A course provided through live broadcast may be recognized for live in-class continuing education credit if the student and the instructor are able to see and hear each other.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7, if offered by a provider specified in Subsection 58-55-302.5(2), shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's, plumber's or elevator mechanic's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs that meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs that have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55a-304. Contractor License Qualifiers.

(1) The capacity and material authority specified in Subsection 58-55-304(4) is clarified as follows:

(a) Except as allowed in Subsection (b), the qualifier must receive remuneration for work performed for the contractor licensee for not less than 12 hours of work per week;.

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration must be in the form of W-2 wages.

(b) The 12 hour minimum in Subsection (a) may be reduced if the total of all hours worked by all owners and employees is less than 50 hours per week, in which case the minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2)(a) A qualifier may hold up to three specialty classifications, in addition to any general contractor classifications, except that an R101 Residential and Small Commercial Non-Structural Remodeling and Repair qualifier may not have any other specialty classifications.

(b) A qualifier may change classifications at any time by surrendering a classification, and by applying for any classification for which the qualifier is permitted by law.

(c) A current qualifier shall surrender or replace the qualifier's classifications as needed to comply with Subsection (2)(a) at the time of any renewal or reinstatement involving the qualifier.

(3) A qualifier may not act as the qualifier for more than three licensees at any one time, unless:

(a) the qualifier demonstrates by sufficient evidence satisfactory to the Commission and the Division that the qualifier exercises material authority over the businesses; and

(b) written approval is granted by the Commission and the Division.

(4) Construction Trades Instruction Facility Qualifier. In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), a compliance agency that issues building permits to sole owners of property shall submit, within 30 days of issuance, the following information concerning each building permit issued in its jurisdiction, to a Division-designated fax number, email address, or written mailing address:

(1) building permit number;

(2) date issued;

(3) issuing compliance agency's name, address, and phone number;

(4) sole owner's full name, home address, and phone number;

(5) building site subdivision and lot number.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(H), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than $1,000 but less than $3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least $100,000 for each incident and $300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306, and 58-55-102(20), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, qualifier, or any owner, including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a tri-merged credit report of the agencies identified in Subsection (A); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 that may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee and any owners; and

(h) any history of prior entities owned or operated by the applicant, licensee, qualifier, or any owner that have failed to maintain financial responsibility.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modification, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program;

(c) Trade union apprenticeship program;

(d) Rocky Mountain Gas Association; and

(e) Home Builders Association of Utah.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (3)(b), (c), (d), and (e) herein shall require program participants to pass the RMGA Gas Appliance Installers Certification Exam, or equivalent exams approved by the Commission established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the RMGA Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate,

to persons who successfully complete their training program containing the following information:

(a) name of the program provider;

(b) name of the approved program;

(c) name of the certificate holder;

(d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the RMGA or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

(1) A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

(2) Except as provided in Subsection (1), a reorganization of the business entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation, or any other business form.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which the license was issued while on inactive status except to identify that licensee as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the contractor classification examination, if required, for the contractor classification for which activation is sought

(c) prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractor's license;

(2) failing to notify the Division within 10 days of any change of the name, address, phone number, or email address of the qualifier or owners of a licensee;

(3) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2) and Section R156-55a-302d;

(4) failing to provide within 30 days of a request from the Division or from any person that has a reasonable basis to make a claim on the licensee's insurance policy:

(a) proof of licensee's insurance coverage;

(b) the name of the licensee's insurance company, policy number, date of expiration, and insurance coverage limits;

(c) a copy of the licensee's insurance policy;

(d) a copy of the licensee's worker compensation policy, if required to maintain worker compensation insurance under Utah law; or

(e) any exclusions included in the licensee's insurance policy;

(5) failing to provide the Division, within 30 days of a request, documents and other requested information to determine compliance with any section under Title 58, Chapter 55 or Title 58, Chapter 1 of the Utah Code;

(6) refusing, as an electrical or plumbing contractor, to timely and accurately certify the hours of work experience when requested by an electrician or plumber who is or has been an employee;

(7) refusing, as a contractor, to timely and accurately certify the work experience for a contractor application when requested by a current or former employee;

(8) failure of a qualifier, owner, applicant, or licensee to be knowledgeable of the laws and rules applicable to their profession;

(9) failing to timely provide, upon request by any person, a copy of a current license or license number when performing construction trades work;

(10) an owner, qualifier, or licensee advising or instructing any person or applicant, for a fee, concerning an examination required under Title 58, Chapter 55 for which that owner, qualifier, or licensee was a subject-matter expert of the examination, unless:

(a) the owner, qualifier, or licensee is an instructor for an accredited university, college, trade, or technical school; and

(b) the Construction Services Commission approves in writing of the owner, qualifier, or licensee providing that instruction;

(11) using, hiring, or contracting with a professional employer organization that is not licensed with the Utah Insurance Department.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE II

FINE SCHEDULE

FIRST OFFENSE

	All Licenses Except	Electrical or

Violation	Electrical or Plumbing	Plumbing
58-55-308(2)	$ 500.00	N/A
58-55-501(1)	$ 500.00	$ 500.00
58-55-501(2)	$ 500.00	$ 800.00
58-55-501(3)	$ 800.00	$1,000.00
58-55-501(9)	$ 500.00	$ 500.00
58-55-501(10)	$ 800.00	$1,000.00
58-55-501(12)	N/A	$ 500.00
58-55-501(14)	$ 500.00	N/A
58-55-501(19)	$ 500.00	N/A
58-55-501(21)	$ 500.00	$ 500.00
58-55-501(22)	$ 500.00	N/A
58-55-501(23)	$ 500.00	N/A
58-55-501(24)	$ 500.00	N/A
58-55-501(25)	$ 500.00	N/A
58-55-501(26)	$ 500.00	N/A
58-55-501(27)	$ 500.00	N/A
58-55-501(28)	$ 500.00	N/A
58-55-501(29)	$ 500.00	N/A
58-55-504(2)	$ 500.00	N/A
SECOND OFFENSE		
58-55-308(2)	$1,000.00	N/A
58-55-501(1)	$1,000.00	$1,500.00
58-55-501(2)	$1,000.00	$1,500.00
58-55-501(3)	$1,600.00	$2,000.00
58-55-501(9)	$1,000.00	$1,000.00
58-55-501(10)	$1,600.00	$2,000.00
58-55-501(12)	N/A	$1,000.00
58-55-501(14)	$1,000.00	N/A
58-55-501(19)	$1,000.00	N/A
58-55-501(21)	$1,000.00	$1,000.00
58-55-501(22)	$1,000.00	N/A
58-55-501(23)	$1,000.00	N/A
58-55-501(24)	$1,000.00	N/A
58-55-501(25)	$1,000.00	N/A
58-55-501(26)	$1,000.00	N/A
58-55-501(27)	$1,000.00	N/A
58-55-501(28)	$1,000.00	N/A
58-55-501(29)	$1,000.00	N/A
58-55-504(2)	$1,000.00	N/A
THIRD OFFENSE		
Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).		

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) If multiple offenses are cited on separate citations, the fine shall be the maximum fine for each offense.

(5) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(6) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence presented.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators;

(2) a certification issued by the Operating Engineers Certification Program; or

(3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.

Pursuant to the provisions of Subsections 58-55-306(1)(b) and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

(1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self-employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The financial history of the applicant, licensee, qualifier, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be $50,000 for the E100 or B100 classification of licensure; $25,000 for the R100 classification of licensure; or $15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

(6) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, qualifier, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing

January 1, 2019	**58-1-106(1)(a)**
Notice of Continuation August 4, 2016	**58-1-202(1)(a)**
	58-55-101
	58-55-308(1)(a)
	58-55-102(39)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-78B. Prelitigation Panel Review Rule.
R156-78B-1. Title.

This rule is known as the "Prelitigation Panel Review Rule".

R156-78B-2. Definitions.

In addition to the definitions in Section 78B-3-403, which shall apply to this rule:

(1) "Answer" means a responsive answer to a request.

(2) "Date of the panel's opinion", "issuance of an opinion", and "issue an opinion", as used in Subsections 78B-3-423(1)(a)(i), 78B-3-416(3)(a)(i)(A), and 78B-3-418(1)(a), respectively, mean the date the Division issues a panel opinion filed with the Division by a prelitigation panel.

(3) "Director" means the Director of the Division of Occupational and Professional Licensing.

(4) "File", "filing", or "filed" means a pleading or document filed with the Division with service to all parties as required in Section R156-78B-7.

(5) "Findings", "conclusions", "determinations", or "results", as used in Section 78B-3-419, means a written outcome of a prelitigation panel whether each claim against each health care provider has merit, and if meritorious, whether the conduct complained of resulted in harm to the claimant.

(6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, enacted by Congress in Pub. L. No 104-91 as implemented by 45 CFR Parts 160 and 164, as amended.

(7) "Issue" or "issued", as it relates to a written action or notice permitted or required from the Division, means the finalization of an action or notice by the Division as reflected by an authorized signature and date on the action or notice.

(8) "Meritorious claim" means that there is a basis in fact and law to conclude that the standard of care has been breached and the petitioner has been injured thereby, such that the petitioner has a reasonable expectation of prevailing at trial.

(9) "Motion" means a request for any action or relief permitted under Sections 78B-3-416 through 78B-3-420 or this rule.

(10) "Nonmeritorious claim" means that the evidence before the panel is insufficient to conclude that the case is meritorious, but does not necessarily mean the case is frivolous.

(11) "Notice" means a notice of intent to commence action under Section 78B-3-412.

(12) "Panel" means the prelitigation panel appointed in accordance with Subsection 78B-3-416(4) to review a request.

(13)(a) "Panel opinion" or "opinion" as shortened in context with reference to a panel opinion, as used in Sections 78B-3-418, 78B-3-419, and 78B-3-423, means the supplemental memorandum opinion rendered by the prelitigation panel as required by Subsection R156-78B-14(2), that articulates the basis for the panel's findings, determinations or results as to whether each claim against each health care provider has merit and, if meritorious, whether the conduct complained of resulted in harm to the claimant.

(b) If a supplemental memorandum opinion is not timely rendered by the prelitigation panel, "panel opinion" or "opinion" means the prelitigation panel findings, conclusions, determinations, or results.

(14) "Party" means a petitioner or respondent.

(15) "Person" means any natural person, sole proprietorship, joint venture, corporation, limited liability company, association, governmental subdivision or agency, or organization of any type.

(16) "Petitioner" means any person who files a request with the Division.

(17) "Pleadings" include the requests, answers, motions, briefs and any other documents filed by the parties to a request.

(18) "Request" means a request for prelitigation panel review under Section 78B-3-416.

(19) "Respondent" means any health care provider named in a request.

(20) "Service" means service as set forth in Subsection R156-78B-7.

R156-78B-3. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 78B-3-416(1)(b) to define, clarify, and establish the process and procedures which govern prelitigation panel reviews.

R156-78B-4. General Provisions.

(1) Purpose.

This rule is intended to secure the just, speedy and economical determination of all issues presented to the Division.

(2) Deviation from Rule.

Except as otherwise required by Title 78B, Chapter 3, the Division may permit a deviation from this rule when it finds compliance to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is a scheduled workday for the Division. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

R156-78B-5. Representations - Appearances.

(1) Representation of Parties.

(a) A party may be represented by counsel or may represent onself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" means active members of the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

(2) Entry of Appearance of Representation.

Parties shall promptly enter their appearances by giving their names and addresses and stating their positions or interests in the proceeding. When possible, appearances shall be entered in writing concurrently with the filing of the request for petitioner and no later than 10 days from service of the request for respondent.

R156-78B-6. Pleadings.

(1) Docket Number and Title.

Upon receipt of a timely Request for Prelitigation Review, the Division shall assign a two letter code identifying the matter as involving this type of request (PR), a two digit code indicating the year the request was filed, a two digit code indicating the month the request was filed, and another number indicating chronological position among requests filed during the month. The Division shall give the matter a title in substantially the following form:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

```
John Doe,
   Petitioner                          Request for
                                     Prelitigation Review

-vs-

Richard Roe,                    No. PR-XX-XX-XXX
   Respondent
```

(2) Form and Content of Pleadings.

(a) Pleadings shall

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

(ii) identify the proceeding by title and docket number, if known; and

(iii) contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought.

(b) A request shall:

(i) by affirmation, set forth the date that the required notice was served;

(ii) include a copy of the notice; and

(iii) reflect service of the request upon all parties named in the notice and request.

(c) If a petitioner fails to attach a copy of the notice to petitioner's request, the Division shall return the request to the petitioner with a written notice of incomplete request and conditional denial thereof. The notice shall advise the petitioner that the request is incomplete and that the request is denied unless the petitioner corrects the deficiency within the time period specified in the notice and otherwise meets all qualifications to have the request granted.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or their counsel of record and shall indicate the addresses of the party and, if applicable, their counsel of record. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there is good ground to support it.

(4) Answers.

A respondent named in a request may file an answer relative to the merits set forth in the petitioner's notice. Affirmative defenses shall be separately stated and numbered in an answer or raised at the time of the hearing. Any answer must be filed no later than 15 days following the filing of the request.

(5) Motions.

(a) Motions to be Filed in Writing.

Motions shall be in writing unless the motion could not have been anticipated prior to the prelitigation panel hearing.

(b) Time Periods for Filing Motions and Responding Thereto.

(i) Motions to Withdraw a Request.

Any motion to withdraw a request shall be filed no later than five days before the prelitigation panel hearing.

(ii) Motions Directed Toward a Request.

Any motion directed toward a request shall be filed no later than 15 days after service of the request.

(iii) Motions Directed Toward the Composition of a Panel.

Any motion directed toward the composition of a panel shall be filed no later than five days after discovering a basis therefore.

(iv) Motions to Dismiss.

Any motion to dismiss shall be filed no later than five days after discovering a basis therefore.

(v) Extraordinary Motions for Discovery or Perpetuation of Evidence.

Any motion seeking discovery or perpetuation of evidence for good cause shown demonstrating extraordinary circumstances shall be filed no later than 15 days before the prelitigation panel hearing.

(vi) Response to a Motion.

A response to a motion shall be filed no later than five days after service of the motion and any final reply shall be filed no later than five days after service of the response to the motion.

(c) Affidavits and Memoranda.

The Division or panel shall permit and may require affidavits and memoranda, or both, in support or contravention of a motion.

(d) The Division or panel may permit or require oral argument on a motion.

R156-78B-7. Filing and Service.

(1) Filing of Pleadings. All pleadings shall be filed with the Division with service thereof to all parties named in the notice. The Division may refuse to accept pleadings if they are not filed in accordance with the requirements of this rule.

(2) Process for Service.

(a) All pleadings and documents issued by the Division or panel that are required to be served shall at the option of the Division be served by personal service, first class mail, registered mail, certified mail, or by express mail. Personal service shall be made upon a party in accordance with the Utah Rules of Civil Procedure by any peace officer within the State of Utah or by any person specifically designated by the Division.

(b) A request for a prelitigation proceeding filed by a petitioner shall be served in accordance with the same process for service required for a notice of intent as set forth in Subsection 78B-3-412(3). All other pleadings or documents filed by a party shall at the option of the party be served by personal service, first class mail, registered mail, certified mail, or by express mail.

(c) When an attorney has entered an appearance on behalf of any party, service upon that attorney constitutes service upon the party so represented.

(3) Proof of Service.

(a) There shall appear on all pleadings or documents required to be served a certificate of service certifying the appropriate method of service as set forth in Subsection (2), in substantially the following form:

TABLE II

```
I hereby certify that I have this day served the foregoing
document upon the parties of record in this proceeding set forth
below (by delivering a copy thereof in person ) (by mailing a
copy thereof, properly addressed by first class mail) (by
registered mail) (by certified mail) (by certified mail, return
receipt requested) (by type of express mail):

                (Name of parties of record)
                  (addresses)

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

(Signature)
(Title)
```

(b) Any pleading or document filed with the Division shall be accompanied by documentation of the service reflected in the certificate of service.

(4) Date of Service.

Pleadings or documents shall be considered served on the date of personal service or mailing date, as set forth in Subsection (2).

R156-78B-8. Panel Selection and Compensation.

(1) The Division shall commence the selection and appointment of panel members following the issuance of a notice of hearing pursuant to this rule.

(2) The selection and appointment of panel members shall be in accordance with Subsections 78B-3-416(4) and (5).

(3) (a) In accordance with Subsection 78B-3-416(4),

whenever multiple respondents are identified in a request, the Division shall select and appoint a panel to sit in consideration of all claims against any respondent as follows:

(i) one lawyer member who is the chairman in accordance with Subsection 78B-3-416(4)(a);

(ii) one lay panelist member in accordance with Subsection 78B-3-416(4)(c);

(iii) one licensed health care provider who is practicing and knowledgeable for each specialty represented by the respondents in accordance with Subsection 78B-3-416(4)(b)(i); and

(iv) if a hospital or their employees are named as a respondent, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, in accordance with Subsection 78B-3-416(4)(b)(ii).

(b) The distinction between a hospital administrator and a person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) is significant and is hereby emphasized.

(c) The person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) shall be from a different facility than the facility which is the subject of the alleged medical liability case, but may be from the same umbrella organization provided the panel member certifies under oath that he is free from bias or conflict of interest with respect to any matter under consideration as required by Subsection 78B-3-416(6).

(d) Petitioner and respondent may stipulate concerning the type of health care provider to be selected and appointed by the Division, unless the stipulation is in violation with the panel composition requirements set forth in Subsection 78B-3-416(4)(b).

(4) Upon stipulation of all parties, a motion to evaluate damages may be submitted to the Division whereupon the Division may appoint an additional panel member to assist in evaluating damages.

(5) The Division shall ensure that panelists possess all qualifications required by statute and this rule.

(6) Upon appointment to a prelitigation panel, each member thereof shall sign a written affirmation in substantially the following form:

TABLE III

I, (panel member), hereby affirm that, as a member of a prelitigation panel, I will discharge my responsibilities without bias towards any party. I also affirm that, to the best of my knowledge, no conflict of interest exists as to any matter which will be entrusted to my consideration as a panel member.

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

(Signature)

(7) Panel members shall be entitled to per diem compensation and travel expenses according to a schedule as established and published by the Division.

R156-78B-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the Division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78B-3-416(2)(a);

(b) the request includes a copy of the notice in accordance with Subsection 78B-3-416(2)(b) and documentation that the notice was served in accordance with Section 78B-3-412; and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78B-3-416(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is filed with the Division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78B-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the Division, on forms available from the Division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the Division may schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the Division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the Division consent to a shorter period of time.

(e) The Division shall thereafter promptly select and appoint a panel in accordance with Subsections 78B-3-416(4) and (5) and this rule.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the Division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the Division, on forms approved by the Division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the Division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the Division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the Division may establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the dates, the Division shall issue a notice of hearing resetting a date, time and a place for the prelitigation panel hearing.

(6) Requests Made By Incarcerated Person.

(a) If a request, notice, or other documentation indicates that the alleged malpractice occurred while the petitioner was incarcerated and the alleged malpractice claim is against the State of Utah, its agencies or employees, the request shall be denied based upon Subsection 63G-7-301(5)(j).

(b) Subsequent requests by or communications from a petitioner whose request has been denied under this subsection will not receive response unless the petitioner files an amended request and notice that demonstrates:

(i) that the alleged malpractice did not occur while the petitioner was incarcerated; or

(ii) that the alleged malpractice claim is not against the State of Utah, its agencies or employees or as provided in Section 63G-7-202.

R156-78B-10. Consequences of Failure to Appear at a Scheduled Hearing.

(1) Except as provided by Section R156-78B-13:

(a) If a party or a representative appointed by the party fails to appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the hearing shall proceed in the party's absence and the party shall lose the right to present any further evidence to the panel.

(b) If neither party nor their representatives appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the Division shall dismiss the request without prejudice. The dismissal shall terminate the tolling of the applicable statute of limitations under Subsection 78B-3-416(3).

R156-78B-11. Prehearing Conferences.

The Division may, in exceptional circumstances as approved by a panel chair, upon written notice to all parties of record, schedule a prehearing conference with the panel for the purposes of formulating or simplifying the issues, obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, and agreeing to other matters as may expedite the orderly conduct of the prelitigation proceeding or the settlement thereof. Agreements reached during the conference shall be recorded in an appropriate order unless the parties enter into a written stipulation on the matters or agree to a statement thereof made on the record by the chairman of the panel.

R156-78B-12. Hearing Procedures.

(1) Authority Governing Hearing Procedures.

Prelitigation panel hearings are informal as provided by Subsection 78B-3-416(1)(c) and are not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act, and they are closed to the public as provided by Subsection 78B-3-417(5)(a).

(2) Duration of Prelitigation Hearings.

The duration of a prelitigation hearing shall be limited to two hours except as otherwise permitted to be extended in duration by the panel chair.

(3) Hearings Closed to the Public.

In accordance with Subsection 78B-3-417(5)(a), prelitigation hearings are closed to the public.

(4) Attendance of Panel Members.

Except where a case is submitted in written form in accordance with Section R156-78B-13, all panel members appointed shall be present during the entire hearing.

(5) Order of Presentation of Evidence.

Unless otherwise directed by the panel at the hearing, the order of procedure and presentation of evidence will be as follows:

(a) Petitioner;

(b) Respondent; and

(c) Petitioner, if the panel chair permits petitioner to present rebuttal evidence.

(6) Method of Presentation of Evidence.

Evidence may be presented by any party on a narrative basis or through direct examination of said party by their counsel of record. The panel may make inquiry of any party pertinent to the issues to be addressed. If a motion to evaluate damages has been granted, the panel may properly take evidence as to that issue. As set forth in Section 78B-3-417, no party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects, including oral argument, evidentiary rebuttal, or submission of briefs.

(7) Rules of Evidence.

Formal rules of evidence are not applicable. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent people in the conduct of their affairs. The panel shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(8) Burden of Proof.

The petitioner shall be responsible for establishing a meritorious claim against any respondent, and if the issue of damages is presented, the amount of damages.

(9) Standard of Proof.

The standard of proof for prelitigation hearings is a preponderance of the evidence.

(10) Use of Evidence.

Use of evidence, documents, and exhibits submitted to a panel shall be in accordance with Subsection 78B-3-417(1) and Section 78B-3-418.

(11) Record of Hearing.

On its own motion, the panel may record the proceeding for the sole purpose of assisting the panel in its subsequent deliberation and issuance of an opinion. The record may be made by means of tape recorder or other recording device. No tape recorder or other device shall be used by anyone otherwise present during the proceeding to record the matter. Upon issuance by the panel of its opinion, the record of the proceeding shall be destroyed.

(12) Subpoenas - Discovery and Perpetuation of Testimony.

(a) Subpoenas for Medical Records Authorized - Discovery and Perpetuation of Testimony Prohibited.

The Division may issue subpoenas for the production of medical records directly related to a claim of medical liability in accordance with Subsection 78B-3-417(2) and (3). However, except as permitted by Subsection 78B-3-417(2) and (3) and in accordance with Subsection 78B-3-417(4), there is not discovery or perpetuation of testimony in prelitigation panel hearings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(b) Requirements and Process for Issuance of Subpoenas for Medical Records.

A request for a subpoena for medical records shall be prepared by the person requesting it in proper form for issuance by the Division and shall be supported by:

(i) a written release for the medical records signed by the individual who is the subject of the medical record or by that individual's guardian or conservator; or

(ii) an affidavit prepared by the person requesting the subpoena which shall include the indicated text:

TABLE IV

I hereby certify:
(1) that the medical record subject to the requested subpoena is believed by the person requesting the subpoena ("requester") to be directly related to the medical liability claim to which the subpoena is related;
(2) that the requester will comply with the requirements of HIPAA as set forth in 45 CFR 164.512(e), which governs the release of protected health information in the course of administrative proceedings;
(3) that more specifically with regard to the requirements of HIPAA, the requester will provide a written statement and documentation to the covered entity from whom the medical records are sought demonstrating satisfactory assurances that:
(a) the requestor provided the subject of the records notice of the subpoena, information about the governing prelitigation proceeding, a time period to object to the release of the subject's medical records, and that either no objections were filed or that objections were filed but resolved by a court of competent jurisdiction and the subpoena is consistent with the resolution, as specified in 45 CFR 164.512(e)(1)(ii)(A) and detailed in 45 CFR 164.512 (e)(1)(iii); or
(b) the parties to the prelitigation proceeding have agreed to a qualified protective order and have presented it to a court of competent jurisdiction or the requestor has requested a qualified protective order from a court of competent jurisdiction, as specified in CFR 164.512(e)(1)(ii)(B) and detailed in 45 CFR 164.512(3)(1)(iv); and
(4) that if the recipient of the subpoena for medical records fails or refuses to comply with the subpoena, the requester understands that resolution of the issues regarding the subpoena needs to be through a court of competent jurisdiction.

R156-78B-13. Submission of Case in Written Form, by Proffer, or a Combination thereof - Requirements.

(1) A full prelitigation panel hearing is not required if the parties enter into a stipulation that no useful purpose would be served by convening a panel hearing as to any or all respondents or if the parties agree to submit their case as to any or all respondents to the panel in written form, by proffer of evidence, or by a combination thereof.

(2) Any case submitted in writing must include a legal argument addressing the relevant evidence and law with regard to the issues presented in the case.

R156-78B-14. Determination - Supplemental Opinion - Issuance of Panel Opinion - Certificate of Compliance.

(1) Panel Determination.

As soon as is reasonably practicable following the conclusion of a hearing or submission of a case to the panel in accordance with Section R156-78B-13, and, if applicable, submission of briefs by the parties, the panel shall render and file with the Division a determination whether each claim against each health care provider has merit or has no merit, and if meritorious whether the conduct complained of resulted in harm to the claimant. If applicable, the determination shall also reflect the panel's evaluation of the damages sustained by the petitioner.

(2) Supplementary Memorandum Opinion.

Within 30 days after filing its determination, the panel shall render and file with the Division a memorandum opinion explaining the panel's determination. The chairman of the panel shall be responsible for the preparation of the memorandum opinion of the panel, but may delegate the initial preparation of the opinion to another member of the panel.

(3) Issuance of Panel Determination and Opinion.

In accordance with Subsections 78B-3-416(3)(a)(i)(A) and 78B-3-418(1)(a), it is the responsibility of a prelitigation panel to render its panel determination and opinion and file them with the Division, and the Division's responsibility to issue the panel determination and opinion.

(4) Certificate of Compliance.

(a) The Director or designee shall issue a certificate of compliance which recites that the petitioner has fully complied with the prelitigation panel requirements of Title 78B, Chapter 3, as follows:

(i) in the case of a meritorious finding or determination, the Division shall issue the certificate of compliance to the petitioner within 15 days after:

(A) the filing of the panel's memorandum opinion; or

(B) in the case of the panel's memorandum opinion not being filed, within 15 days after the deadline for the filing of the memorandum opinion;

(ii) in the case of a determination made under Subsection 78B-3-416(3)(d)(ii)(A), within 15 days after petitioner's filing of an affidavit of respondent's failure to reasonably cooperate in the scheduling of a prelitigation hearing;

(iii) in the case of a submission of a written stipulation that no useful purpose would be served by convening a prelitigation panel submitted under Subsection 78B-3-416(3)(e), within 15 days after the filing of the stipulation; and

(iv) in all other cases where an affidavit of merit is required as specified by Section 78B-3-423, within 15 days after the timely filing of the affidavit of merit.

(b) The Division shall include with its service of a certificate of compliance copies of supporting documentation including the applicable panel determination or finding, supplemental memorandum opinion, determination on petitioner's affidavit of respondent's failure to reasonably cooperate in the schedule of a prelitigation hearing, required affidavits of merit, etc.

(c) In accordance with Subsection 78B-3-423(6), a certificate of compliance shall not be issued to a person who fails to timely file a required affidavit of merit.

R156-78B-15. Affidavits alleging Failure to Reasonably Cooperate in Scheduling a Hearing.

(1) As required by Subsection 78B-3-416(3)(c)(ii), an affidavit submitted by a petitioner alleging a respondent's failure to reasonably cooperate in scheduling a prelitigation hearing shall be submitted within 180 days of petitioner's request for prelitigation panel review.

(2) The affidavit alleging respondent's failure to reasonably cooperate in scheduling a prelitigation hearing filed under Subsection (1) shall set forth specific factual allegations that:

(a) respondent failed to reasonably cooperate in scheduling a hearing; and

(b) the hearing could not be held within the jurisdictional time frame of 180 days from the date of the request for prelitigation review.

(3) Failure to reasonably cooperate in scheduling a hearing may include one or more of the following reasons:

(a) a respondent failed to agree upon a first and second choice of dates for a prelitigation hearing;

(b) a respondent failed to reasonably participate in determining the type of health care providers requested for the prelitigation hearing panel; or

(c) a respondent submitted a motion for and obtained a continuance of the prelitigation hearing and failed to timely submit a notice of availability for a rescheduled hearing.

(4) An affidavit alleging failure to reasonably cooperate in scheduling a prelitigation hearing shall comply with Section R156-78B-6 governing pleadings and Section R156-78B-7 governing filing and service.

(5) A respondent may file a response to an affidavit alleging failure to reasonably cooperate in scheduling a prelitigation hearing within five days after the service of the affidavit. Any response shall be in the form of a counter affidavit.

(6) The Division shall review petitioner's affidavit alleging

failure to reasonably cooperate in scheduling a hearing and respondent's counter affidavit, if any, and make a written determination within 15 days of the filing of petitioner's affidavit, under either Subsections 78B-3-416(3)(d)(ii)(A) or (B). The written determination shall be accompanied by a certificate of compliance or a notice to file an affidavit of merit, as appropriate.

R156-78B-16a. Affidavits of Merit - In General.

(1) The required affidavit of merit under Subsection 78B-3-423(1) shall consist of two or more affidavits:

(a) one executed by the claimant's attorney or by a pro se claimant as required by Subsection 78B-3-423(2)(a); and

(b) one or more signed by an appropriate health care provider or providers as required by Subsections 78B-3-423(2)(b) and (3).

(2) The required affidavits shall:

(a) comply with Section R156-78B-6 governing pleadings and Section R156-78B-7 governing filings and service; and

(b) identify by name each respondent included in the affidavit.

R156-78B-16b. Affidavits of Merit - Affidavit of Counsel.

Each affidavit of merit executed by the claimant's attorney or by a pro se claimant as required by Subsections 78B-3-423(1) and (2)(a) shall include the following text immediately prior to the affiant's signature:

TABLE V

I hereby certify:
1. that I have consulted with and reviewed the facts of the case with a health care provider (or providers) who meet(s) the requirements of Utah Code Subsection 78B-3-423(4);
2. that the provider (or providers) has (have) determined after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of a medical liability action with respect to (identify by name each respondent included in the affidavit(s) of merit); and
3. that if I file an action in court against a respondent, I will notify the Division within 60 days of the filing in accordance with Utah Administrative Code R156-78B-17.
The affidavit(s) of merit are attached.

R156-78B-16c. Affidavits of Merit - Affidavit of Health Care Provider or Providers.

(1) Each affidavit of merit signed by a health care provider as required by Subsections 78B-3-423(1) and (2)(b) shall include the following text immediately prior to the affiant's signature:

TABLE VI

I hereby certify that I am an appropriate health care provider qualified to render an affidavit of merit in this medical malpractice case as specified by Utah Code Subsection 78B-3-423(4). My license class and professional specialty are: (describe).
I further certify that I have reviewed the medical records and other relevant material involved in this medical malpractice case and have determined that:
(1) In my opinion, there are reasonable grounds to believe that the applicable standard of care was breached by the following respondent(s): (identify by name each respondent included in the affidavit).
(2) In my opinion, the breach was a proximate cause of the injury claimed in the notice of intent to commence action.
(3) The specific reasons for my opinion are (explanation for each respondent named in the affidavit).

(2) As provided by Subsection 78B-3-423(3), the statement that there are reasonable grounds to believe that the applicable standard of care was breached shall be waived if the claimant received an opinion that there was a breach of the applicable standard of care under Subsection 78B-3-418(2)(a)(i).

R156-78B-16d. Affidavits of Merit - Health Care Provider Affiant or Affiants.

The health care provider who signs an affidavit of merit under Subsection 78B-3-423(4) and R156-78B-16c is clarified as follows. The health care provider shall:

(1) if none of the respondents is a physician or an osteopathic physician, be one or more health care providers who hold an active and in good standing license in Utah or another state in the same specialty or the same class of license as the respondents; or

(2) if at least one of the respondents is a physician or an osteopathic physician, be exclusively a physician who is licensed and in good standing in Utah or another state to practice medicine in all of its branches.

R156-78B-16e. Affidavits of Merit - Request for 60-day Extension to File.

(1) In accordance with Subsection 78B-3-423(5), a request for a 60-day extension to file an affidavit of merit shall be supported by an affidavit signed by the claimant or the claimant's attorney that includes the following text immediately prior to the affiant's signature:

TABLE VII

I hereby certify that the claimant is unable to timely submit an affidavit of merit as required by Subsection 78B-3-423(1) because:
(1) a statute of limitations would impair the action; and
(2) the affidavit of merit could not be obtained before the expiration of the statute of limitations for the following reason or reasons (describe).
I further certify that this affidavit has been served on each named respondent in accordance with Section R156-78B-7 on the earlier of:
(a) the required time frame specified in Subsection 78B-3-423(1)(b)(i); or
(b) the date this affidavit was filed with the Division.

(2) Any respondent may submit a response to a request for extension to file an affidavit of merit within five days after the service of the affidavit. Any response shall be in the form of a counter affidavit.

(3) The Division shall review an affidavit in support of a claimant's request for a 60-day extension, and respondent's counter affidavit, if any, and render a determination within 15 days after the filing of the request.

R156-78B-17. Notice to Division of Court Action.

(1) If a claimant files an action in court against a respondent, the claimant shall give the Division written notice of that action within 60 days of the filing.

(2) The notice shall identify:

(a) the filing date;

(b) the court; and

(c) the name of the respondent.

KEY: medical malpractice, prelitigation, certificate of compliance, affidavit of merit
December 10, 2018 78B-3-416(1)(b)
Notice of Continuation January 10, 2017

R162. Commerce, Real Estate.
R162-2e. Appraisal Management Company Administrative Rules.
R162-2e-101. Title.

This chapter is known as the "Appraisal Management Company Administrative Rules."

R162-2e-102. Definitions.

(1) "Affiliation" means a business association:

(a) between:

(i) two individuals registered, licensed, or certified under Section 61-2g; 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 "AMC" stands for appraisal management company.

(3) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a state or federal holiday.

(4) "Client" is defined in Section 61-2e-102(10).

(5) "Competency statement" means a statement provided by the AMC to the appraiser that, at a minimum, requires the appraiser to attest that the appraiser:

(a) is competent according to USPAP standards;

(b) recognizes and agrees to comply with:

(i) laws and regulations that apply to the appraiser and to the assignment;

(ii) assignment conditions; and

(iii) the scope of work outlined by the client; and

(c) has access, either independently or through an affiliation pursuant to Subsection (1), to the records necessary to complete a credible appraisal, including:

(i) multiple listing service data; and

(ii) county records.

(6)(a) "Employee" means an individual:

(i) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and

(ii) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person.

(b) "Employee" does not include an independent contractor who performs duties other than at the discretion of, and subject to the supervision and instruction of, another person.

(c) For purposes of applying Subsection R162-2e-401(1)(g), an appraiser who completes an assignment is considered to be an employee of the AMC that offers the assignment if:

(i) this subsection (a) describes the employment relationship between the appraiser and the AMC; or

(ii) pursuant to this subsection (a), the appraiser is an employee of a company:

(A) that is wholly owned by the AMC; or

(B) in which the AMC owns a controlling interest.

(7) "Select" means:

(a) for purposes of composing the AMC appraiser panel, to review and evaluate the qualifications of an appraiser who applies to be included on the AMC's appraiser panel; and

(b) for purposes of assigning an appraisal activity to an appraiser:

(i) to choose from the AMC's appraiser panel an individual appraiser or appraisal entity to complete an assignment; or

(ii) to compile, from among the appraisers included in the AMC's appraiser panel, an electronic distribution list of appraisers to whom an assignment will be offered through e-mail.

(8) The acronym "USPAP" stands for Uniform Standards of Professional Appraisal Practice.

R162-2e-201. Registration Required - Qualification for Registration.

(1) The division may not register or renew the registration of an AMC that fails to:

(a) comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act";

(b) register with the Utah Division of Corporations and Commercial Code and provide to the division its certificate of existence;

(c) pursuant to this Subsection (4)(a), evidence having secured a surety bond that:

(i) is in the amount of $25,000; and

(ii) provides, throughout the full period of registration, for the division to make a claim:

(A) on behalf of an appraiser; and

(B) for unpaid fees as awarded to the appraiser in a final judgment entered by a court of competent jurisdiction; or

(d) comply with any provision of these rules.

(2) The division shall schedule a hearing before the board for an AMC that:

(a)(i) applies for registration or renewal of registration;

(ii) has a control person who discloses, or the division finds through its own research, an issue that might affect the control person's moral character; and

(iii) the division determines that the board should be aware of the issue; or

(b) fails to provide an adequate explanation for the AMC's:

(i) plan to ensure the use of licensed appraisers in good standing;

(ii) plan to ensure the integrity of the appraisal review process; or

(iii) plan for record keeping.

(3)(a) An AMC shall register with the division in the name of the legal entity under which it is registered with the Utah Division of Corporations and Commercial Code and conducts the business of appraisal management in Utah and in other states.

(b) An AMC shall notify the division of a dba, trade name, or assumed business name under which the registered legal entity operates in Utah:

(i) at the time of registration; or

(ii) if applicable, immediately upon beginning to operate under such dba, trade name, or assumed business name.

(c) If an AMC changes its registered name, a dba, a trade name, or an assumed business name, the AMC shall notify the division:

(i) in writing; and

(ii) within ten business days of making the change.

(4)(a) The deadline by which an AMC shall demonstrate that the entity has obtained a surety bond pursuant to Subsection (1)(c) is as follows:

(i) For an AMC that applies for registration on or after October 1, 2012, the bond shall be obtained as a condition for initial registration.

(ii) For an AMC that obtained its initial registration prior to January 1 2011 and applies for renewal on or after October 1, 2012, the bond shall be obtained as a condition of the 2012 renewal.

(iii) For an AMC that is not described by this Subsection (4)(a)(i) or (ii), the deadline for obtaining the surety bond shall be January 1, 2013.

(b) Failure to comply with an applicable deadline as outlined in this Subsection (4)(a) shall result in the automatic suspension of an AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

(c) If an AMC's surety bond lapses or is cancelled during the period of registration, the division shall:

(i) allow the AMC 30 days in which to comply with the surety bond requirement; and

(ii) if the AMC fails to obtain or reinstate a surety bond within 30 days, immediately and automatically suspend the AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

R162-2e-201a. Claims Against an AMC Bond.

(1) To bring a claim against a bond that is held by an AMC pursuant to Section 61-2e-204(2)(c) and Subsection R162-2e-201(1)(c), an appraiser shall:

(a) demonstrate that a court of competent jurisdiction has awarded the appraiser a final judgment against the AMC for the fee(s) claimed;

(b) demonstrate that the appraiser earned the fee(s) claimed and that the AMC has had a reasonable period of time in which to tender payment; and

(c) submit a complaint to the division alleging nonpayment of fee(s):

(i) after a reasonable period of time for payment has passed; and

(ii) no later than 30 days after obtaining a judgment as required under this Subsection (1)(a).

(2) In evaluating whether an AMC has had a reasonable period of time in which to tender payment, the division shall consider the following:

(a) if a payment deadline is specified in the contract that applies to the assignment for which the appraiser claims an unpaid fee, whether the payment deadline has passed; or

(b) if the applicable contract is silent as to a period for payment, whether at least 90 days have passed since the date on which the appraiser submitted a report that complied with the assignment, including all scope of work requirements, as determined by the division in its sole discretion.

R162-2e-205. Division Service Fees -- AMC Registry Fee.

(1) The division shall collect and transmit to the Appraisal Subcommittee an AMC registry fee from:

(a) an AMC registered under the Appraisal Management Company Registration and Regulation Act; or

(b) an AMC that operates as a subsidiary of a federally regulated financial institution.

(2) The amount of the AMC registry fee shall be as follows:

(a) for an AMC that has been in existence for more than one year, the amount collected shall be the established AMC registry fee multiplied by the number of appraisers who have performed an appraisal in connection with a covered transaction for the AMC in Utah during the previous year; and

(b) for an AMC that has not been in existence for more than one year, the amount collected shall be the established AMC registry fee multiplied by the number of appraisers who have performed an appraisal in connection with a covered transaction for the AMC in Utah since the AMC commenced doing business.

R162-2e-301. Use of Licensed or Certified Appraisers.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide to the division a statement signed by its designated controlling person that explains the AMC's system for verifying that:

(1) an appraiser who is added to the panel is licensed or certified; and

(2) an appraiser who is assigned to complete a real estate appraisal remains licensed or certified in good standing.

R162-2e-302. Adherence to Standards.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide a statement to the division, signed by its designated controlling person, certifying that the AMC verifies that each appraisal assignment offered to an appraiser acting as an independent contractor is:

(1) signed by an appraiser who is included in the AMC's panel at the time the assignment is offered; and

(2) includes the information outlined in Subsection 304(1)(b)-(c).

R162-2e-303. Recordkeeping.

An AMC's statement of recordkeeping required upon registration with the division and biennially thereafter shall be signed by its designated controlling person and shall describe:

(1) its system for maintaining a record of:

(a)(i) the name of the appraiser who accepts each assignment and signs the corresponding appraisal report; and

(ii) if an assignment is accepted by an appraisal entity, the name of the entity that accepts the assignment; and

(b) the client that requested the appraisal report;

(2) the format in which the records required to be kept under Section 61-2e-303(1) are maintained;

(3) an explanation of the system through which the AMC backs up any records kept as required by Section 61-2e-303(1) that are maintained in an electronic format;

(4) the location where the records are kept; and

(5) the name of the records custodian.

R162-2e-304. Required Disclosures and Customary and Reasonable Compensation.

(1) In addition to the disclosures required by Section 61-2e-304, an AMC shall:

(a) notify the appraiser in writing at the time an appraiser is first added to an appraiser panel:

(i) of the general criteria the AMC uses to rank an appraiser on the panel; and,

(ii) if the AMC chooses to separate appraisers into different tiers, of the general criteria the AMC uses to distinguish one tier from another;

(b) notify the affected appraisers in writing of any changes if, after the notice provided for in subsection (1)(a), the AMC changes any of the general criteria the AMC considers relative to an appraiser's ranking, tier, or classification within the panel structure;

(c) at the time an assignment is offered, disclose to the appraiser:

(i) the total amount that the appraiser may expect to earn from the assignment:

(A) disclosed as a dollar amount; and

(B) delineating any fees or costs that will be charged by the AMC to the appraiser;

(ii)(A) the property address;

(B) the legal description; or

(C) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;

(iii) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment; and

(iv) any known deadlines within which the assignment

must be completed;

(d) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;

(e) before requiring the appraiser to submit a completed report, disclose to the appraiser:

(i) the total fee that will be collected by the AMC for the assignment; and

(ii) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount; and

(f) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(i) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(ii) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

(2) Within 10 business days of receiving a written request from an appraiser or any inquiry related to the business relationship between the appraiser and the AMC, an AMC shall reply to the appraiser in writing. An inquiry may address subjects including the AMC scorecard, appraiser panel status, clarification on work assignments, training, or notice of the removal of an appraiser from an AMC panel as required by Utah Code Section 61-2e-306. If the AMC has requested appraisers send such inquiries to a specific address or email address, appraisers shall direct such inquiries accordingly.

(a) If the AMC has determined to decrease the number of assignments to the appraiser the AMC's reply will explain the reason why the AMC has made this decision;

(b) if the AMC has determined to cease offering assignments to the appraiser, the the AMC's reply will explain the reason why the AMC has made this decision; and

(c) if the AMC has determined to remove the appraiser from an appraiser panel, the AMC shall provide the appraiser notice as required by Utah Code Section 61-2e-306.

(3) Any written notice or reply required by this section from an AMC to an appraiser may be communicated:

(a) by email;

(b) in a written communication to the mailing address provided by the appraiser; or

(c) by posting to a private vendor website, portal, or other digital venue to which the appraiser has access for at least 30 days following posting of the notice.

(4) For purposes of this Section, the term " general criteria" means a standard description of the factors the AMC considers when ranking or differentiating appraisers or tiers within a panel of appraisers. This does not require an AMC to disclose any algorithms, formulas, or information about proprietary processes.

(5) In replying to a request from an appraiser, an AMC is not required to reply to subsequent or multiple requests if a request unreasonably duplicates a prior request from that person.

(6) In addition to the presumptions of compliance referenced in Utah Code Subsection 61-2e-304(2)(b), an AMC is presumed to be in compliance with the Utah requirement to pay appraisers a customary and reasonable fee if the AMC compensates an appraiser for a completed appraisal at a rate consistent with the fee schedule for the state of Utah as published by the United States Department of Veterans Affairs Denver Regional Loan Center Appraisal Fee Schedule, as the fee schedule is updated from time-to-time.

R162-2e-305. Employee Requirements.

(1) An AMC seeking registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed the 15-hour national USPAP course.

(2) An AMC seeking renewal of the company's registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has completed the seven-hour national USPAP update course.

R162-2e-306. Offering an Appraisal Assignment and Communicating With Two or More Appraisers About a Potential Assignment.

(1) If an AMC simultaneously contacts two or more independent contractor appraisers to offer an assignment of a one to four-unit residential mortgage appraisal or to gauge interest in such an assignment, the AMC shall include in the communication the information required in R162-2e-304(1)(c). To provide adequate time for a contract appraiser to determine the appraiser's competency and to communicate interest in the assignment to the AMC, the AMC may not award the assignment to a contract appraiser until the earlier of:

(a) 120 minutes following the offering of an assignment; or

(b) each contract appraiser has affirmatively responded to the offering.

(2)(a) If a one to four-unit residential mortgage appraisal assignment is simultaneously offered to two or more independent contractor appraisers on a business day, the AMC shall allow the appraisers a minimum of 120 minutes to respond to accept the assignment before offering the assignment to other appraisers.

(b) If a one to four-unit residential mortgage appraisal assignment is simultaneously offered to two or more independent contractor appraisers on a day other than a business day, the AMC shall allow the appraisers until 9:00 A.M. Mountain Time on the next business day to accept the assignment before offering the assignment to other appraisers.

(3) If an independent contractor appraiser declines to accept an assignment or does not respond by the specified deadline, the AMC may offer the assignment to other appraisers.

(4) Nothing in this Section prohibits an AMC from communicating or attempting to communicate, directly or in real time with an independent contractor appraiser, without offering an assignment, in order to determine the appraiser's availability, willingness, competency, fee requirements, and turn time for a potential assignment. In such circumstances, the AMC is not required to wait any length of time before contacting other candidates who appear to the AMC to qualify for the potential assignment.

R162-2e-401. Unprofessional Conduct.

(1) An entity that is registered or required to be registered with the division as an AMC pursuant to Section 61-2e-201 commits unprofessional conduct if the entity:

(a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;

(b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:

(i) the client;

(ii) a person licensed under Section 61-2c or Section 61-2f; or

(iii) any other person with whom the appraiser reasonably needs to communicate in order to obtain information necessary to complete a credible appraisal report;

(c) requires the appraiser to do anything that does not comply with:

(i) USPAP; or

(ii) assignment conditions and certifications required by

the client;

(d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including but not limited to:

(i) a loan closing; or

(ii) a specific dollar amount being achieved by the appraiser in the appraisal report;

(e) requests, for the purpose of facilitating a mortgage loan transaction,

(i) a broker price opinion; or

(ii) any other real property price or value estimation that does not qualify as an appraisal;

(f) charges an appraiser:

(i) for a service not actually performed; or

(ii) for a fee or cost that:

(A) is not accurately disclosed pursuant to Subsection R162-2e-304(1)(a)(ii); or

(B) exceeds the actual cost of a service provided by a third party;

(g) fails to pay the appraiser's fee within 45 days of completion of the appraisal assignment;

(h) uses or retains an employee to complete an appraisal assignment without first disclosing to the client that the appraiser is an employee of the company, such that the company is acting in the capacity of an appraisal firm rather than as an AMC pursuant to Utah Code Subsection 61-2e-102(4); or

(i) when acting in the capacity of an AMC pursuant to Utah Code Subsection 61-2e-102(4), uses or retains an employee appraiser to complete an appraisal assignment.

(2) An AMC commits unprofessional conduct and creates a violation by the appraiser of R162-2g-502b(1)(f) if the AMC requires the appraiser to:

(a) accept full payment; and

(b) remit a portion of the full payment back to the AMC.

R162-2e-402. Administrative Proceedings.

(1) An adjudicative proceeding before the board shall be conducted as an informal adjudicative proceeding.

(2)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2e-307 or 61-2e-402(2) against an AMC or an owner or controlling person of an AMC; and

(iv) an appeal from an automatic revocation under Section 61-2e-203(3)(b), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application that is denied by the division on the grounds that the controlling person's attestation to upstanding moral character is false.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of an AMC registration by the division;

(ii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iii) the denial of renewal or reinstatement of an AMC registration for incompleteness or for failure to comply with a requirement found in statute or rule.

(3)(a) An application for an AMC registration shall be deemed a request for agency action.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against an AMC, a controlling person, or an appraiser on the panel of an AMC requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in Subsection R162-2e-402(5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2e-402, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division through a registration process.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a person who is registered or required to be registered as an AMC to appear for a hearing, the division shall provide to the person the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (5)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iii) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

KEY: administrative proceedings, appraisal management company (AMC), conduct, AMC registry fee

December 12, 2018	**61-2e-102(4)**
Notice of Continuation April 17, 2015	**61-2e-103**
	61-2e-307
	61-2e-305
	61-2e-402(1)

R277. Education, Administration.
R277-301. Educator Licensing.
R277-301-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53E-6-201, which gives the Board power to issue licenses.

(2) This rule specifies the types of licenses and license areas of concentration available and the requirements and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.

R277-301-2. Definitions.

(1) "Accredited school" means a public or private school that:

(a) meets standards essential for the operation of a quality school program; and

(b) has received formal approval through a regional accrediting association.

(2) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators including information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

(e) a record of disciplinary action taken against the educator.

(3) "Educator preparation program" means the same as that term is defined in R277-303-2.

(4) "Endorsement" means a designation on a license area of concentration earned through demonstrating required competencies established by the Superintendent that qualifies the individual to:

(a) provide instruction in a specific content area; or

(b) apply a specific set of skills in an education setting.

(5) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(6)(a) "License areas of concentration" or "license area" means a designation on a license of the specific educational setting or role for which the individual is qualified, to include the following:

(i) Early Childhood;

(ii) Elementary;

(iv) Secondary;

(v) Educational Leadership

(vi) Career and Technical Education or "CTE";

(vii) School Counselor;

(viii) School Psychologist;

(ix) Special Education;

(x) Preschool Special Education;

(xi) Deaf Education;

(xii) Speech-Language Pathologist;

(xiii) Speech-Language Technician;

(xiv) School Social Worker; and

(xv) Communication Disorders.

(7) "Licensing Jurisdiction" means the designated educator licensing authority in any foreign country or state of the United States of America and the Department of Defense Education Activity (DoDEA).

(8) "Renewal" means reissuing or extending the length of a license consistent with R277-500.

R277-301-3. License Structure.

(1) Utah educator licenses include the following licenses:

(a) Associate educator license;

(b) Professional educator license; and

(c) LEA-specific educator license.

(2) All new Utah educator licenses shall include general, content knowledge, and pedagogical requirements.

(3) The Superintendent may only issue a single active Utah educator license to an individual.

(4) An educator license shall include at least one area of concentration.

(5) License areas of concentration and endorsements shall have a designation of:

(a) associate;

(b) professional; or

(c) LEA-specific.

(6) An associate educator license may only include associate or LEA-specific license areas of concentration and endorsements.

(7) An LEA-specific educator license may only include LEA-specific license areas of concentration and endorsements.

(8) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of licensing.

(9) The Superintendent shall review, adopt, and establish passing standards for all assessments required for educator licensing.

(10)(a) All licenses expire on June 30 of the year of expiration and may be renewed any time after January 1 of the same year.

(b) Responsibility for license renewal rests solely with the licensee.

R277-301-4. Associate Educator License Requirements.

(1) The Superintendent shall issue an associate educator license to an individual that applies for the license and that meets all requirements in this Section R277-301-4.

(2) An associate educator license, license area, or endorsement is valid for two years.

(3) The Superintendent may only renew an associate educator license if:

(a) the individual has less than two years of experience in a Utah public or accredited private school; or

(b) the individual is employed by a Utah public or accredited private school and the employer has requested a one year extension of the license.

(4) The general requirements for an associate educator license shall include:

(a) completion of a criminal background check including review of any criminal offenses and clearance in accordance with Rule R277-214;

(b) completion of the educator ethics review described in R277-500 within one calendar year prior to the application; and

(c) one of the following:

(i) a bachelor's degree or higher from a regionally accredited institution;

(ii) current enrollment in a university-based Board-approved educator preparation program that will result in a bachelor's degree or higher from a regionally accredited institution; or

(iii) skill certification in a specific CTE area as established by the Superintendent.

(5) The content knowledge requirements for an associate educator license shall include:

(a) for an elementary license area, passage of an elementary content knowledge test, approved by the Superintendent, that distinctly measures content in:

(i) mathematics;

(ii) reading/language arts;

(iii) social studies; and

(iv) science;

(b) for a secondary or CTE license area with a content endorsement, one of the following:

(i) passage of a content knowledge test approved by the Superintendent, where available;

(ii) a bachelor's degree or higher with a major in the content area from a regionally accredited university; or

(iii) enrollment in a program that will result in a degree described in Subsection (5)(b)(ii); and

(c) for all other license areas, enrollment in a university-based Board-approved educator preparation program.

(6) Additional requirements for an associate educator license shall include:

(a) successful completion of professional learning modules created or approved by the Superintendent in:

(i) educator ethics;

(ii) classroom management and instruction;

(iii) basic special education law and instruction;

(iv) the Utah Effective Teaching Standards described in R277-530; or

(b) enrollment in a university-based Board-approved educator preparation program.

(7) An individual holding a professional educator license may receive an associate license area or endorsement in additional areas if all the requirements of this section are met.

(8) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval by the Superintendent to satisfy the associate educator license requirements.

(9) The Superintendent shall designate a panel of at least three Board staff members to review an appeal made under subsection (8).

(10) An LEA that employs an individual that holds an associate educator license shall develop a personalized professional learning plan designed to support the educator in meeting the requirements for a professional educator license no later than 60 days after beginning work in the classroom, which shall:

(a) be provided to the Superintendent upon request;

(b) include a formal discussion and observation process no later than 30 days after beginning work in the classroom; and

(c) consider:

(i) previous education related experience; and

(ii) previous educational preparation activities.

(11) An educator with an associate educator license may upgrade to a professional educator license at any time prior to expiration of the associate educator license if the educator meets all requirements of Section R277-301-5.

R277-301-5. Professional Educator License Requirements.

(1) The Superintendent shall issue a professional educator license to an individual that applies for the license and meets all requirements in this Section R277-301-6.

(2) A professional educator license, license area, or endorsement is valid for five years.

(3) The general requirements for a professional educator license shall include:

(a) all general requirements for an associate educator license under Subsection R277-301-5(4);

(b) completion of:

(i) a bachelor's degree or higher from a regionally accredited institution; or

(ii) skill certification in a specific CTE area as established by the Superintendent; and

(c) one of the following:

(i) a recommendation from a Board-approved educator preparation program; or

(ii) a standard educator license in the area issued by a licensing jurisdiction outside of Utah that is currently valid or is renewable consistent with Section 53E-6-307.

(4) The content knowledge requirements for a professional educator license shall include:

(a) all content knowledge requirements for an associate educator license under Subsection R277-301-4(5); and

(b) demonstration of all content knowledge competencies as established by the Superintendent.

(5) The pedagogical requirements for professional educator license shall include:

(a) demonstration of all pedagogical competencies as established by the Superintendent; and

(b) passage of a pedagogical performance assessment meeting standards established by the Superintendent, where available.

(6) An individual holding a Utah level 1, level 2, or level 3 educator license on January 1, 2020 is considered to have met the pedagogical requirements described in Subsection (5).

(7) An individual holding a Utah level - APT educator license that is employed by a Utah LEA and an individual enrolled in ARL or a university-based Board-approved educator preparation program on January 1, 2020 may meet the content knowledge and pedagogical requirements described in this Section R277-301-6 by completing all requirements of the applicable program.

(8) An individual holding a Utah professional educator license and license area in early childhood education, elementary, secondary, CTE, special education, or deaf education is considered to have met the pedagogical performance assessment requirement of Subsection (5)(b) if applying to add any of the license areas in the subsection.

(9) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval or denial by the Superintendent to satisfy the professional educator license requirements.

(10) The Superintendent shall designate a panel of at least three individuals, including at least two Board licensed educators not employed by the Board, to review an appeal and make a recommendation to the Superintendent for the Superintendent's review and decision described in Subsection (9).

R277-301-6. Educator Licenses Issued by Licensing Jurisdictions Outside of Utah.

(1) The Superintendent shall review applications for a Utah educator license for individuals holding educator licenses issued by licensing jurisdictions outside of Utah to determine if the applicant has met the requirements for a Utah license under this rule.

(2) The Superintendent shall accept scores from an applicant that meet the Utah standard for passing on assessments from licensing jurisdictions outside of Utah that utilize the same assessment as Utah as meeting the requirements of this rule.

(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge or pedagogical performance assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of this rule.

(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies from an applicant utilized by licensing jurisdictions outside of Utah that are reasonably equivalent to Utah competencies.

(5) Individuals with 4 or more years of successful experience in a public or accredited private school under a standard license issued by another jurisdiction shall be considered to have met both the content knowledge and pedagogical assessment requirements in the areas and subjects taught.

R277-301-7. LEA-specific Educator License Requirements.

(1) The Superintendent may issue an LEA-specific educator license to a candidate if:

(a) the LEA requesting the LEA-specific educator license has an adopted policy, posted on the LEA's website, which includes:

(i) educator preparation and support:

(A) as established by the LEA; and

(B) aligned with the Utah Effective Teaching Standards described in R277-530;

(ii) criteria for employing educators with an LEA-specific license; and

(iii) compliance with all requirements of this Rule R277-301;

(b) an LEA governing board applies on behalf of the the candidate

(c) the candidate meets all the requirements in this Section R277-301-7; and

(d) within the first year of employment, the LEA trains the candidate on:

(i) educator ethics;

(ii) classroom management and instruction;

(iii) basic special education law and instruction; and

(iv) the Utah Effective Teaching Standards described in R277-530.

(2)(a) Except as provided in Subsection (2)(b), an LEA governing board may request an LEA-specific educator license for a license area described in Subsection R277-301-2(6).

(b) An LEA may not request an LEA-specific educator license for a license area in:

(i) Special Education; or

(ii) Preschool Special Education.

(3) An LEA-specific license, license area, or endorsement is valid only within the requesting LEA.

(4) An LEA-specific license, license area, or endorsement is valid for one, two, or three years in accordance with the LEA governing board's application.

(5) The first renewal of an LEA-specific educator license, license area, or endorsement shall be approved or denied by the Board.

(6) The Board may require that subsequent renewals be approved by the Board on a case by case basis.

(7) An LEA-specific license expires immediately if the educator's employment with the LEA that requested the license ends.

(8) The general requirements for an LEA-specific educator license shall include:

(a) completion of a criminal background check including review of any criminal offenses and clearance in accordance with Rule R277-214;

(b) completion of the educator ethics review described in Rule R277-500 within one calendar year prior to the application; and

(c) approval of the request by the LEA governing board in a public meeting no more than 60 days prior to the application, which includes the LEA's rationale for the request.

(9) The content knowledge and pedagogical requirements for an LEA-specific educator license shall be established by the LEA governing board.

R277-301-8. Requirements for LEAs.

(1) An LEA shall provide a mentoring program that provides a trained mentor educator and annual mentoring plan:

(a) for educators holding an associate educator license;

(b) for at least two years for LEA-specific educator license holders; and

(c) for educators holding a professional educator license with less than three years of experience.

(2) A trained mentor educator under Subsection (1) shall hold a professional educator license and shall, where possible:

(a) perform substantially the same duties as the educator with release time to work as a mentor; or

(b) be assigned as an instructional coach or equivalent position.

(3) A trained mentor educator under Subsection (1) shall assist the educator to meet the Utah Effective Educator Standards established in Rule R277-530, but may not serve as an evaluator of the educator.

(4) A mentoring program under Subsection (1) shall include:

(a) a formal professional learning plan and LEA support in meeting the requirements of a professional license area; and

(b) if the educator holds an LEA-specific educator license, on-going training on educator ethics and special education.

(5) An LEA school that requests LEA-specific licenses, license areas, or endorsements shall prominently post the following information on each school's website:

(a) disclosure of the fact that the school employs individuals holding LEA-specific educator licenses, license areas, or endorsements;

(b) the percentage of the types of licenses, license areas, and endorsements held by educators employed in the school based on the employees' FTE in CACTUS; and

(c) a link to the Utah Educator Look-up tool provided by the Superintendent in accordance with Subsection R277-515-7(6).

R277-301-9. Superintendent Annual Report to the Board.

The Superintendent shall annually report to the Board on licensing, including:

(1) educator licensing;

(2) educator preparation; and

(3) equitable distribution of teachers.

R277-301-10. Effective Date.

(1) This rule will be effective beginning January 1, 2020.

(2) This rule will supersede Rule R277-502 on January 1, 2020.

KEY: professional competency, educator licensing

December 10, 2018 **Art X Sec 3**
53A-6-104
53A-1-401

R277. Education, Administration.
R277-303. Educator Preparation Programs.
R277-303-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-6-201(3)(a), which allows the Board to establish the criteria for obtaining licenses.

(2) The purpose of this rule is to establish criteria for educator preparation programs in the State of Utah.

R277-303-2. Definitions.

(1)(a) "Educator preparation program" means a comprehensive program administered by an entity that is intended to prepare individuals to meet the requirements for a Utah professional license or license area of concentration.

(b) "Educator preparation program" may include a program developed by or associated with an institution of higher education, individual LEA, or the Board.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "License area" has the same meaning as set forth in Subsection R277-301-2(5)(a).

(4) "Professional license" means the educator license described in Section R277-301-6.

R277-303-3. Educator Preparation Program Review and Approval.

(1) The Superintendent shall establish uniform procedures for initial approval and review of educator preparation programs to ensure compliance with this R277-303.

(2) The Superintendent shall approve an educator preparation program that meets the requirements of this rule and the standards for program approval established in:

(a) Rule R277-304;

(b) Rule R277-305;

(c) Rule R277-306; and

(d) all other applicable Board rules.

(3) The Superintendent shall conduct an on-going review of approved educator preparation programs and shall renew or deny approval for a program at least every seven years.

(4) The Superintendent may grant preliminary approval to a new educator preparation program within a Utah public college or university pending approval by the Utah State Board of Regents.

(5) The Superintendent shall make a report to the Board when an educator preparation program's initial application for approval is granted or denied.

(6) The Superintendent may place an approved educator preparation program on probation for:

(a) failure to meet program requirements detailed in applicable Board rules; or

(b) failure to submit complete and accurate information in a report required under this rule.

(7) The Board may revoke the approval of a probationary program that fails to meet probationary requirements with at least one year's notice.

(8) The Superintendent may require a program or subset of programs to submit reports to inform the annual report to the Board required in Section R277-301-10.

(9) The Superintendent shall accept an approved educator preparation program's recommendations for a professional license or license area if the prospective licensee has met all other requirements of Board rule.

R277-303-4. Educator Preparation Programs.

(1) An educator preparation program that applies for approval by the Superintendent shall demonstrate how it will ensure that participants:

(a) are prepared to meet the Utah Effective Educator Standards established in R277-530;

(b) successfully complete or are prepared to complete the pedagogical performance assessment required in R277-301;

(c) have met the competencies required in R277-301; and

(d) have sufficiently demonstrated the ability to work in the applicable license area and subject area.

(2) In addition to the requirements of Subsection (1), an educator preparation program that is not also a Utah LEA shall:

(a) have a physical location in the state of Utah where participants attend classes; or

(b) if the program provides only online instruction:

(i) have the program's primary headquarters located in Utah; and

(ii) be licensed to do business through the Utah Department of Commerce; and

(c) establish entry requirements that are designed to ensure that only high quality individuals enter the preparation program, which include measures of:

(i) previous academic success;

(ii) disposition for employment in an educational setting; and

(iii) basic skills in reading, writing, and mathematics; and

(d) include a student teaching or intern experience that meets the requirements detailed in:

(i) Rule R277-304;

(ii) Rule R277-305; and

(iii) Rule R277-306; and

(e) include a pedagogical performance assessment meeting standards established by the Superintendent for all new students enrolled in the program after January 1, 2020 in all license areas for which such an assessment is available.

(3) An approved educator preparation program may recommend an individual that completed the program for a professional license or license area for up to five years after the individual completed the program, as long as all current license requirements have been met.

(4) If five years have passed since an individual completed an approved educator preparation program, the program may recommend the individual for a professional license or license area if the program:

(a) reviews the individual's program; and

(b) requires the individual to complete any additional necessary requirements to meet current programs standards prior to making a licensing recommendation.

(5) Notwithstanding Subsections (3) and (4), an approved educator preparation program may recommend an individual who began the program before January 1, 2020 for a professional license or license area without meeting the pedagogical performance assessment requirement in R277-301, but must present documentation showing that the individual met the appropriate license requirements in effect prior to that date.

R277-303-5. Superintendent Responsibilities.

(1) The Superintendent shall provide support to educator preparation programs and potential licensees to the extent that funding allows by:

(a) maintaining a website to:

(i) facilitate collaboration between educator preparation programs;

(ii) facilitate communication between potential educators and approved programs; and

(iii) provide access to up-to-date research on educator preparation and education practices;

(b) reviewing third-party preparation materials for

alignment with the Utah Effective Educator Standards in R277-530; and

(c) working with potential licensed educators to help them become licensed educators.

(2) The Superintendent shall design and maintain a model educator preparation program that:

(a) meets all requirements of this rule;

(b) may be adopted by an LEA or an accredited private school; and

(c) is overseen by staff distinct from the staff responsible for ensuring educator preparation program compliance with this Rule R277-303.

R277-303-6. Effective Date.

This rule will be effective beginning January 1, 2020.

KEY: educator preparation program, programs
December 10, 2018 **Art X Sec 3**
53E-3-401(4)
53E-6-201(3)(a)

R277. Education, Administration.
R277-444. Distribution of Money to Arts and Science Organizations.
R277-444-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system with the Board;

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; and

(c) Section 53E-3-501, which directs the Board to establish rules and standards for the public schools, including curriculum and instruction requirements.

(2) The purpose of this rule is to provide for the distribution of money appropriated by the state to an arts or science organization that:

(a) provides an educational service to a student or teacher; and

(b) facilitates a student developing and using the knowledge, skills, and appreciation defined in an arts or science core standard.

R277-444-2. Definitions.

(1) "Arts organization" means a professional artistic organization that provides an educational service related to dance, music, drama, art, visual art, or media art in the state.

(2) "City" has the same meaning as that term is defined in Subsection 10-1-104(1).

(3) "Community" means the group of persons that have an interest or involvement in the education of a person in kindergarten through grade 12, including:

(a) a student, parent, teacher, and administrator; and

(b) an association or council that represents a person described in Subsection (2)(a).

(4) "Core standard" means a standard:

(a) established by the Board in Rule R277-700 as required by Section 53E-3-501; and

(b) that defines the knowledge and skills a student should have in kindergarten through grade 12 to enable a student to be prepared for college or workforce training.

(5) "Cost effectiveness" means:

(a) maximization of the educational potential of the resources available through the organization; and

(b) not using money received through a program for the necessary maintenance and operational costs of the organization.

(6)(a) "Educational service" means an in-depth instructional workshop, demonstration, presentation, performance, residency, tour, exhibit, teacher professional development, side-by-side mentoring, or hands-on activity that:

(i) relates to an arts or science core standard;

(ii) except as provided in Subsection (6)(b), takes place in a public school, charter school, professional venue, or a facility;

(b) "Educational service" may include a distance experience that is provided from a remote location if done in addition to the requirements of Subsection (6)(a) as a follow-up experience.

(7) "Educational soundness" means an educational service that:

(a) is designed for the community and grade level being served, including a suggested preparatory activity and a follow-up activity that are relevant to a core standard;

(b) features literal interaction of a student or teacher with an artist or scientist;

(c) focuses on a specific core standard; and

(d) shows continuous improvement guided by analysis of an evaluative tool.

(8) "Fiscal agent" means a city that:

(a) is designated by an organization as described in Subsection R277-444-4(5); and

(b) acts on behalf of an organization to perform financial or compliance duties.

(9) "Hands-on activity" means an activity that includes active involvement of a student with an artist or scientist, ideally with material provided by the organization.

(10) "Informal Science Education Enhancement program" or "iSEE program" means a program described in Section R277-444-7 for which a science organization may apply to receive money appropriated by the state.

(11) "Organization" means:

(a) a nonprofit corporation organized under:

(i) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or

(ii) Section 501(c)(3), Internal Revenue Code; and

(b)(i) an arts organization; or

(ii) a science organization.

(12) "Procedural efficiency" means the organization delivers the educational service at the lowest cost possible.

(13) "Professional excellence" means the organization:

(a) has been juried or reviewed, based on criteria for artistic or scientific excellence, by a panel of recognized and qualified critics in the appropriate discipline;

(b) has received a recognition of excellence through an award, a prize, a grant, a commission, or an invitation to participate in a recognized series of presentations in a well-known venue;

(c) includes a recognized and qualified professional in the appropriate discipline who has created an artistic or scientific project or composition specifically for the organization to present; or

(d) any combination of criteria described in Subsections (13)(a) through (c).

(14) "Professional outreach programs in the schools program" or "POPS program" means a program described in Section R277-444-7 for which an arts organization may apply to receive money appropriated by the state.

(15)(a) "Program" means the system through which the Board grants money appropriated by the state to an organization to enable the organization to provide its expertise and resources through an educational service in the teaching of a core standard.

(b) "Program" includes:

(i) the Provisional program;

(ii) the POPS program;

(iii) the iSEE program;

(iv) the Science Enhancement program;

(v) the Integrated Student and New Facility Learning program; and

(vi) the Subsidy program.

(16) "Science organization" means a professional science organization that provides a science-related educational service in the state.

R277-444-3. Program Application.

(1) If the state appropriates money for a program, an organization may apply to receive money from a program:

(a) on an application form provided by the Superintendent; and

(b) during the fiscal year immediately prior to the fiscal year in which the organization is to receive the money.

(2) The application shall include:

(a) documentation that the organization is:

(i) a non-profit corporation that has existed at least three consecutive years prior to the date of the application;

(ii) an arts organization or a science organization that has attained professional excellence in the discipline; and

(iii) fiscally responsible;

(b) a description of the matching funds required by Subsection R277-444-4(3); and

(c) an educational service plan, which describes:

(i) the educational service that the organization will use the program money to provide; and

(ii) a plan to creatively and effectively provide the educational service.

(3)(a) The Superintendent shall evaluate an application with community representatives and make a recommendation on the application to the Board.

(b) The Board shall approve or deny an application based on:

(i) whether the organization meets the requirements of this rule; and

(ii) how well the organization's educational service plan meets the purpose of this rule.

R277-444-4. Grant General Provisions and Disbursement.

(1)(a) The Superintendent shall make a recommendation to the Board regarding the grant amount for an organization based on:

(i) the annual appropriation for a program;

(ii) the grant amount an organization received in a previous fiscal year, if any;

(iii) an organization's year-end report, if any; and

(iv) how well the organization's educational service plan meets the purpose of this rule relative to the other organizations participating in the program.

(b) If the state reduces the amount of money appropriated for a program from the previous fiscal year, the Board may use its discretion to allocate the money among the organizations participating in the program.

(2)(a) The Superintendent shall notify an organization of the grant amount within 30 days of the Board meeting in which it is approved, but no earlier than July 1.

(b)(i) The Superintendent shall disburse the money to an organization after an organization submits a request for reimbursement.

(ii) An organization shall submit a reimbursement request for education service plan implementation expenses:

(A) by the annual deadline specified by the Superintendent; and

(B) in a form prescribed by the Superintendent.

(3) An organization that receives money from a program shall have equal matching money from another source to support its delivery of an educational service.

(4)(a) Except as provided by Subsection (4)(b), an organization may not charge the school, teacher, or student a fee for the educational service for which the organization receives program money.

(b) An organization that receives money from the Subsidy program may charge a fee for an educational service.

(5)(a) An organization may designate a city as the organization's fiscal agent if:

(i) the city's governing body oversees and monitors the organization and fiscal agent's compliance with program requirements;

(ii) the city complies with board rules;

(iii) the city and the organization use program money for required purposes described in this rule; and

(iv) the city and the organization have an agreement or contract in place regarding the designation of the city as the organization's fiscal agent.

(b) A city fiscal agent may not use program money:

(i) for the city's general administrative purposes; or

(ii) to fund administrative costs to act as the organization's fiscal agent.

(6) A scientist, artist, or entity hired or sponsored by an organization to provide an educational service shall comply with the procedures and requirements of this rule.

R277-444-5. Year-end Report - Evaluation -- Accountability -- Variations.

(1)(a) An organization that receives money from a program shall submit a year-end report to the Superintendent by the required annual deadline.

(b) The year-end report shall include:

(i) documentation of the organization's non-profit status;

(ii) a budget expenditure report and income source report using a form provided by the Superintendent, including a report and accounting of matching funds and a fee charged, if any, for an educational service;

(iii) a record of the dates and places of all educational services rendered, the number of hours of educational service per LEA, school, and classroom, as applicable, with the number of students and teachers served, including:

(A) documentation of the schools that have been offered an opportunity to receive an educational service over a three year period, to the extent possible and consistent with the organization's plan;

(B) documentation of collaboration with the Superintendent and the community in planning the educational service, including the content, a preparatory activity, and a follow-up activity that are relevant to a core standard;

(C) a brief description of the educational service provided through the program, and if requested, copies of any material developed; and

(D) a description of how the educational service contributed to a student developing and using the knowledge, skills, and appreciation defined in an arts or science core standard;

(iv) a summary of the organization's evaluation of:

(A) cost-effectiveness;

(B) procedural efficiency;

(C) collaborative practices;

(D) educational soundness; and

(E) professional excellence; and

(v) a description of the resultant goal or plan for continued evaluation and improvement.

(2) The Superintendent may visit an organization to evaluate the effectiveness and preparation of the organization:

(a) before the Board approves an application;

(b) before disbursing money; and

(c) during an educational service.

(3)(a) In addition to the year-end report required by Subsection (1), the Superintendent may require an evaluation or an audit procedure from an organization demonstrating use of money consistent with state law and this rule.

(b) If the Board finds that an organization did not use money received from a program consistent with state law and this rule, the Board may:

(i) reduce or eliminate the grant to the organization in the current fiscal year;

(ii) deny an organization's participation in a program in a future fiscal year; or

(iii) impose any other consequence the Board deems necessary to ensure the proper use of public funds.

(4)(a) An organization may not deviate from the approved educational service plan for which the organization receives money unless:

(i) the organization submits a written request for variation to the Superintendent;

(ii) the organization receives approval from the Superintendent for the variation; and

(iii) the variation is consistent with state law and this rule.

(b) An organization shall describe the nature and justification for a variation approved under Subsection (4)(a) in a year-end report.

(5) The Superintendent shall ensure that participating LEAs receive educational services in a balanced and

comprehensive manner over a three year period.

R277-444-6. Provisional Program Requirements.

(1) Through the Provisional program, and pending legislative funding, the Board may grant an organization money to enable the organization to:

(a) further develop an educational service that is sound;

(b) increase the number of students or teachers who receive an educational service; or

(c) expand the geographical location in which the educational service is delivered.

(2) The Board may grant money from the Provisional program to an organization for one year.

(3) An organization may apply for a grant each year for up to five years if the organization demonstrates an increase in the educational service between the year-end report and the proposed educational service plan described in the application.

R277-444-7. POPS and iSEE Program Requirements.

(1)(a) Through the POPS program, the Board may grant money to an arts organization to provide an educational service state-wide.

(b) Through the iSEE program, the Board may grant money to a science organization to provide an educational service state-wide.

(c) A grant from the POPS program or iSEE program is on-going, subject to the review required by Subsection (4).

(2)(a) An arts organization may apply for the POPS program and a science organization may apply for the iSEE program if the organization:

(i) has successfully participated in the Provisional program for three consecutive years in which the state appropriates money to the Provisional program;

(ii) has educational staff and the capacity to deliver an educational service state-wide; and

(iii) demonstrates during participation in the Provisional program:

(A) the quality and improvement of an educational service; and

(B) fiscal responsibility.

(b) An organization shall submit a letter of intent to transition from the Provisional program to the POPS program or the iSEE program to the Superintendent by October 1 of the calendar year immediately before the calendar year in which the organization submits the application for the POPS program or the iSEE program.

(3) An organization that receives money from the POPS program or iSEE program may not receive money from the Provisional program or the Subsidy program in the same fiscal year.

(4)(a) At least once every four years, the Superintendent shall review and evaluate all organizations' participation in the POPS program and the iSEE program, which may include:

(i) evaluation of an educational service plan, year-end report, reimbursement form, or audit; and

(ii) attendance at an educational service or a site visit.

(b) The Superintendent shall:

(i) report to the Board the results of the review and evaluation; and

(ii) make a recommendation to the Board regarding an organization's continued participation in the program based on how well the organization fulfills the purpose of this rule.

R277-444-8. Subsidy Program Requirements.

(1)(a) Through the Subsidy program, the Board may grant money to an organization that provides a valuable education service but does not qualify for participation in another program.

(b) A grant from the Subsidy program is on-going, subject to the review required by Subsection (5).

(2)(a) An organization may apply to receive money through the Subsidy program if the organization has successfully participated in the Provisional program for three consecutive years in which the state appropriated money to the Provisional program.

(b) An organization shall submit a letter of intent to transition from the Provisional program to the Subsidy program to the Superintendent:

(A) within the calendar year immediately before the calendar year in which the organization will submit an application for the Subsidy program; and

(B) by the deadline set by the Superintendent.

(3) The Board may approve an application to participate in the Subsidy program if the Board finds the organization:

(a) has successfully provided a valuable educational service during its participation in the Provisional program; and

(b) does not meet the requirements to participate in the POPS program or iSEE program because the organization:

(i) delivers an educational service regionally instead of state-wide; or

(ii) charges a fee for an educational service.

(4) An organization that receives money from the Subsidy program may not receive money from the another program in the same fiscal year.

(5)(a) At least once every four years, the Superintendent shall review and evaluate all organizations' participation in the Subsidy program, which may include:

(i) evaluation of an educational service plan, year-end report, reimbursement form, or audit; and

(ii) attendance at an educational service or a site visit.

(b) The Superintendent shall:

(i) report to the Board the results of the review and evaluation; and

(ii) make a recommendation to the Board regarding an organization's continued participation in the Subsidy program based on how well the organization fulfills the purpose of this rule.

KEY: arts, science, core standards

December 10, 2018	**Art X Sec 3**
Notice of Continuation August 13, 2015	**53E-3-401(4)**
	53E-3-501

R277. Education, Administration.
R277-477. Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program.
R277-477-1. 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 53F-2-404(2)(d), which allows the Board to adopt rules regarding the time and manner in which a student count shall be made for allocation of funds; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) In accordance with Section 53D-2-202, through representation on the Land Trusts Protection and Advocacy Committee, the Board exercises trust oversight of:

(a) the Common School Trust;

(b) the School for the Deaf Trust; and

(c) the School for the Blind Trust.

(3) The Board implements the School LAND Trust Program and provides oversight, support, and training for school community councils and Charter Trust Land Councils consistent with Subsection 53G-7-1206(2), Rule R277-491, and this Rule R277-477.

(4) The purpose of this rule is to:

(a) provide financial resources to a public school to implement a component of a school's improvement plan or charter document in order to enhance and improve student academic achievement;

(b) provide a means to involve a parent of a school's student in decision-making regarding the expenditure of School LAND Trust Program funds allocated to the school;

(c) provide direction in the distribution of funds from the Trust Distribution Account, as funded in Section 53F-2-404;

(d) provide for appropriate and adequate oversight of the expenditure and use of funds by a designated local board of education, an approving entity, and the Board;

(e) provide for proper allocation of funds as stated in Section 53F-2-404, and the appropriate and timely distribution of the funds;

(f) enforce compliance with statutory and rule requirements, including the responsibility for a school community council to notify school community members regarding the use of funds; and

(g) define the roles, duties, and responsibilities of the Superintendent with regards to the School Children's Trust.

R277-477-2. Definitions.

(1) "Approving entity" means an LEA governing board, university, or other legally authorized entity that may approve or reject a plan for a district or charter school.

(2)(a) "Charter trust land council" means a council comprised of a two person majority of elected parents of students attending the charter school convened to act in lieu of the school community council for the charter school.

(b) "Charter trust land council" includes a charter school governing board if:

(i) the charter governing board meets the two-parent majority requirement; and

(ii) the charter school governing board chooses to serve as the charter trust land council.

(3) "Council" means a school community council or a charter trust land council.

(4) "Digital citizenship" means the same as that term is defined in Section 53G-7-1202.

(5) "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report of the previous year.

(6) "Funds" means School LAND Trust program funding as defined in Section 53F-2-404.

(7) "Most critical academic need" means an academic need identified in a school's improvement plan or school's charter.

(8)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes the director of a charter school.

(9) "Satellite charter school" has the same meaning as that term is defined in Section R277-482-2.

(10) "Student" means a child in public school grades kindergarten through 12 counted on the fall enrollment report of a school district, charter school, or USDB.

(11) "Trust Distribution Account" means the restricted account within the Uniform School Fund created under Subsection 53F-9-201(2).

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

(1) A public school receiving School LAND Trust Program funds shall have:

(a) a school community council as required by Section 53G-7-1202 and Rule R277-491;

(b) a charter school trust land council as required by Section 53G-7-1205; or

(c) an approved exemption under this rule.

(2) A public school receiving School LAND Trust Program funds shall submit a principal assurance form, as described in Section R277-491-4 and Subsection 53G-7-1206(3)(c), prior to the public school receiving a distribution of School LAND Trust Program funds.

(3) A charter school that elects to receive School LAND Trust funds shall:

(a) have a charter trust land council;

(b) be subject to Section 53G-7-1203 if the charter trust land council is not a charter school governing board; and

(c) receive training about Section 53G-7-1206.

(4) A charter school that is a small or special school may receive an exemption from the charter land trust council composition requirements contained in Subsection 53G-7-1205(9) upon application to the school's authorizer if the small or special school demonstrates and documents a good faith effort to recruit members to the charter trust land council.

(5) The principal of a charter school that elects to receive School LAND Trust funds shall submit a plan, approved by the school's governing board, to the School Children's Trust Section on the School LAND Trust website:

(a) no later than April 1; or

(b) for a newly opening charter school, no later than November 1 in the school's first year in order to receive funding in the year the newly opening charter school opens.

(6)(a) An approving entity:

(i) shall consider a plan annually; and

(ii) may approve or disapprove a school plan.

(b) If an approving entity does not approve a plan, the approving entity shall:

(i) provide a written explanation why the approving entity did not approve the plan; and

(ii) request that the school revise the plan, consistent with Subsection 53G-7-1206(4)(d).

(7)(a) To receive funds, the principal of a public school shall submit a School LAND Trust plan to the School Children's Trust Section annually through the School LAND Trust website using the form provided.

(b) The Board may grant an exemption from a school using the Superintendent-provided form, described in Subsection (7)(a), on a case-by-case basis.

(8) In addition to the requirements of Subsection (6), the School LAND Trust plan described in Subsection (7)(a) shall

include the date the council voted to approve the plan.

(9)(a) The principal of a school shall ensure that a council member has an opportunity to provide a signature indicating the member's involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year.

(b) The principal shall collect a council member's signature, as described in Subsection (9)(a), digitally or through a paper form created by the Membership Form on the website and uploaded to the database.

(c) An LEA or district school, upon the permission of the LEA's governing board, may design the LEA or district school's own form to collect the information required by this Subsection (9).

(10)(a) An approving entity shall establish a timeline, including a deadline, for a school to submit a school's School LAND Trust plan.

(b) A timeline described in Subsection (10)(a) shall:

(i) require a school's School LAND Trust plan to be submitted to the approving entity with sufficient time so that the approving entity may approve the school's School LAND Trust plan no later than May 15 of each year; and

(ii) allow sufficient time for a council to reconsider and amend the council's School LAND Trust plan if the approving entity rejects the school's plan and still allow the school to meet the May 15 approving entity's approval deadline.

(c) After an approving entity has completed the approving entity's review, the approving entity shall notify the School Children's Trust Section that the review is complete.

(11)(a) Prior to approving a plan, an approving entity shall review a School LAND Trust plan under the approving entity's purview to confirm that a School LAND Trust plan contains:

(i) academic goals;

(ii) specific steps to meet the academic goals described in Subsection (11)(a)(i);

(iii) measurements to assess improvement; and

(iv) specific expenditures focused on student academic improvement needed to implement plan goals.

(b) The approving entity shall determine whether a School LAND Trust plan is consistent with the approving entity's pedagogy, programs, and curriculum.

(c) Prior to approving a School LAND Trust plan, the president or chair of the approving entity shall provide training annually on the requirements of Section 53G-7-1206 to the members of the approving entity.

(12)(a) After receiving the notice described in Subsection (10)(c), the School Children's Trust Section shall review each School LAND Trust plan for compliance with the law governing School LAND Trust plans.

(b) The School Children's Trust Section shall report back to the approving entity concerning which School LAND Trust plans were found to be out of compliance with the law.

(c) An approving entity shall ensure that a School LAND Trust plan that is found to be out of compliance with the law by the School Children's Trust Section is amended or revised by the council to bring the school's School LAND Trust plan into compliance with the law.

(13) If an approving entity fails to comply with Subsection (12)(c), the Superintendent may report the failure to the Audit Committee of the Board as described in Section R277-477-9.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

(1) Parents, teachers, and the principal, in collaboration with an approving entity, shall use School LAND Trust Program funds in data-driven and evidence-based ways to improve educational outcomes, including:

(a) strategies that are measurable and show academic outcomes with multi-tiered systems of support; and

(b) counselors and educators working with students and families on academic and behavioral issues when a direct impact on academic achievement can be measured.

(2) School LAND Trust Program expenditures are required to have a direct impact on the instruction of students in the particular school's areas of most critical academic need.

(3) A school may not use School LAND Trust Program funds for the following:

(a) to cover the fixed costs of doing business;

(b) for construction, maintenance, facilities, overhead, security, or athletics; or

(c) to pay for non-academic in-school, co-curricular, or extracurricular activities.

(4) A school district or local school board may not require a council or school to spend the school's School LAND Trust Program funds on a specific use or set of uses.

(5)(a) A council may budget and spend no more than $7,000 for in-school civic and character education, including student leadership skills training and digital citizenship training as described in Section 53G-7-1202.

(b) A school may designate School LAND Trust Program funds for an in-school civic or character education program or activity only if the plan clearly describes how the program or activity has a direct impact of the instruction of students in a school's areas of most critical academic need.

(6) Notwithstanding other provisions in this rule, a school may use funds as needed to implement a student's Individualized Education Plan.

(7) Student incentives implemented as part of an academic goal in the School LAND Trust Program may not exceed $2 per awarded student in an academic school year.

R277-477-5. Distribution of Funds - Determination of Proportionate Share.

(1)(a) A local school board or charter school governing board shall report the prior year expenditure of distributions for each school.

(b) The total expenditures each year described in Subsection (1)(a) may not be greater than the total available funds for any school or school district.

(c) A school district shall adjust the current year distribution of funds received from the School LAND Trust Program as described in Section 53F-2-404, as necessary to maintain an equal per student distribution within a school district based on school openings and closings, boundary changes, and other enrollment changes occurring after the fall enrollment report.

(2) A charter school and each of the charter school's satellite charter schools are a single LEA for purposes of public school funding.

(3)(a) For purposes of this Subsection (3) and Subsection (4), "qualifying charter school" means a charter school that:

(i) would receive more funds from a per pupil distribution than the charter school receives from the base payment described in Subsection (3)(c); and

(ii) is not a newly opening charter school as described in Subsection (4).

(b) The Superintendent shall distribute the funds allocated to charter schools as described in this Subsection (3).

(c) The Superintendent shall first distribute a base payment to each charter school that is equal to the product of:

(i) an amount equal to the total funds available for all charter schools; and

(ii) at least 0.4%.

(d) After the Superintendent distributes the amount described in Subsection (3)(c), the Superintendent shall distribute the remaining funds to qualifying charter schools on a per pupil basis.

(4)(a) The Superintendent shall distribute an amount of

funds to a newly opening charter school that is equal to the greater of:

(i) the base payment described in Subsection (2)(c); or

(ii) a per pupil amount based on the newly opened charter school's projected October 1 enrollment count.

(b) The Superintendent shall increase or decrease a newly opening charter school's first year distribution of funds in the school's second year to reflect the newly opening charter school's actual first year October 1 enrollment.

(5) If a school chooses not to apply for funds or does not meet the requirements for receiving funds, the Superintendent shall deposit the unused balance in the Trust Distribution Account.

R277-477-6. School LAND Trust Program - Implementation of Plans and Required Reporting.

(1) A school shall implement a plan as approved.

(2)(a) The principal shall submit a plan amendment authorized by Subsection 53G-7-1206(4)(d)(iii) through the School LAND Trust website for approval, including the date the council approved the amendment and the number of votes for, against, and absent.

(b) The approving entity shall:

(i) consider the amendment for approval; and

(ii) approve an amendment before the school uses funds according to the amendment.

(c) The School Children's Trust Section shall review an amendment for compliance with statute and rule before the school uses funds according to the amendment.

(3)(a) A school shall provide an explanation for any carryover that exceeds one-tenth of the school's allocation in a given year in the School LAND Trust Plan or final report.

(b) The Superintendent shall recommend a district or school with a consistently large carryover balance over multiple years for corrective action for not making adequate and appropriate progress on an approved plan.

(c) The Board may take corrective action to remedy excessive carryover balances as outlined in Section R277-477-9.

(4) By approving a plan on the School LAND Trust website, the approving entity affirms that:

(a) the entity has reviewed the plan; and

(b) the plan meets the requirements of statute and rule.

(5)(a) A district or charter school business official shall enter prior year audited expenditures by specific category on the School LAND Trust website on or before October 1.

(b) The expenditure data shall appear in the final report submitted online by a principal, as required by Subsection 53G-7-1206(5)(b).

(6) A principal shall submit a final report on the School LAND Trust website by October 20 annually.

R277-477-7. School LAND Trust Program - School Children's Trust Section to Review Compliance.

(1)(a) The School Children's Trust Section shall review each school's final report for consistency with the approved school plan.

(b) The School Children's Trust Section shall create a list of all schools whose final reports indicate that funds from the School LAND Trust Program were expended inconsistent with the statute, rule, or the school's approved plan.

(c) The School Children's Trust Section shall annually report a school described in Subsection (1)(b) to the school district contact person, district superintendent, and president of the local board of education or charter board, as applicable.

(2) The School Children's Trust Section may visit a school receiving funds from the School LAND Trust Program to discuss the program, receive information and suggestions, provide training, and answer questions.

(3)(a) The Superintendent shall supervise annual compliance reviews to review expenditure of funds consistent with the approved plan, allowable expenses, and the law.

(b) The Superintendent shall report annually to the Board Audit Committee on compliance review findings and other compliance issues.

(c) After receiving the report described in Subsection (3)(b) and any other relevant information requested by the committee, the Board Audit Committee may make a determination regarding questioned expenditures and corrective action as outlined in Section R277-477-9.

R277-477-8. Superintendent Responsibilities.

The Superintendent shall:

(1) represent the Board on the Land Trusts Protection and Advocacy Committee in accordance with Section 53D-2-202;

(2) review and approve a charter school plan on behalf of the State Charter School Board;

(3) provide notice as necessary to the State Charter School Board of changes required of charter schools for compliance with statute and rule;

(4) review and approve a plan submitted by the USDB school community council as necessary;

(5) prepare the annual distribution of funds to implement the School LAND Trust Program pursuant to Section 53F-2-404;

(6) report the total distribution amount for the following fiscal year to the Legislative Fiscal Analyst before December 31 annually; and

(7) provide training to entities involved with the School LAND Trust Program consistent with Subsection 53G-7-1206(8).

R277-477-9. Failure to Comply with Rule.

(1) If a local school board, school district, district or charter school, or council fails to comply with the provisions of this rule, the Superintendent may report the failure to the Audit Committee of the Board.

(2) If the Audit Committee of the Board finds that any local school board, school district, district or charter school, or council failed to comply with statute or rule, the Audit Committee may recommend that the Board take any or all of the following actions:

(a) in cooperation with the local school board or charter school governing board, develop a corrective action plan for the school district, district or charter school, or council;

(b) require the school to reimburse the School LAND Trust Program for any inappropriate expenditures;

(c) reduce, eliminate, or withhold future funding; or

(d) any other necessary and appropriate corrective action.

(3) The Board may, by majority vote, take any of the actions outlined in Subsection (2) to correct or remedy a violation of statute or rule by a local school board, school district, district or charter school, or council.

KEY: schools, school community councils, trust lands funds
December 10, 2018 Art X Sec 3
Notice of Continuation August 13, 2015 53A-16-101.5(4)
53A-1-401

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) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53E-9-302(1), which directs that the Board may make rules to establish student data protection standards for public education employees, student aides, and volunteers; and

(d) Subsection 53G-11-511(4), which directs that the Board may make rules to ensure the privacy and protection of individual evaluation data.

(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 data, 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 53G-7-1101(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 53E, Chapter 9, Part 3.

(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) "Cyber security framework" means:

(a) the cyber security framework developed by the Center for Internet Security found at http://www.cisecurity.org/controls/; or

(b) a IT security framework that is comparable to the cyber security framework described in Subsection (6)(a).

(7) "Data governance plan" has the same meaning as defined in Subsection 53E-9-301(7).

(8) "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.

(9) "Destroy" means to remove data or a record:

(a) in accordance with current industry best practices; and

(b) rendering the data or record irretrievable in the normal course of business of an LEA or a third-party contractor.

(10) "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.

(11) "Expunge" means to seal a record so as to limit its availability to all except authorized individuals.

(12) "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.

(13) "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, and its implementing regulations found at 34 C.F.R., Part 99.

(14) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(15) "Metadata dictionary" has the same meaning as defined in Subsection 53E-9-301(14).

(16) "Personally identifiable student data" has the same meaning as defined in Subsection 53E-9-301(14).

(17) "Significant data breach" means a data breach where:

(a) an intentional data breach successfully compromises student records;

(b) a large number of student records are compromised;

(c) sensitive records are compromised, regardless of number; or

(d) a data breach an LEA deems to be significant based on the surrounding circumstances.

(18) "Student data advisory groups" has the same meaning as described in Subsection 53E-9-302(3).

(19) "Student data manager" means the individual at the LEA level who:

(a) is designated as the student data manager by an LEA under Section 53E-9-303;

(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 data; and

(e) is in charge of providing annual LEA staff and volunteer training on data privacy.

(20) "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.

(20) "Third party contractor" has the same meaning as defined in Subsection 53E-9-301(23).

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 data 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 53E, Chapter 9, Part 3, Student Data Protection Act;

(c) Title 53E, Chapter 9, Part 2, Utah Family Educational Rights and Privacy Act; and

(d) this Rule R277-487.

(4) An LEA shall comply with Title 53E, Chapter 9, Part 3, Student Data Protection Act.

(5) An LEA shall comply with Section 53E-9-204.

(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 data 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 contractor 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 C.F.R. 99.31(a)(1)(i)(B); and

(b) the contract between the LEA and the third party contractor includes the provisions required by Subsection 53E-9-309(2).

(9) An LEA shall publicly post the LEA's definition of directory information, as defined in FERPA, and describe how a student data manager may share personally identifiable information that is directory information.

(10) An LEA shall provide the Superintendent with a copy or link to the LEA's directory information definition by October 1 annually.

(11) By October 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 significant data breaches of student data either by the LEA or by third parties to the Superintendent within ten business days of the initial discovery of the significant data breach.

(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 the following information by October 1 annually:

(a) evidence that the LEA has implemented a cyber security framework; and

(b) the name and contacted information for the LEA's designated Information Security Officer.

(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 data.

(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 data.

(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 data.

(18) A public education employee licensed under Section 53E-6-201 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 Rule R277-515.

(19) The Board may discipline a licensed educator in accordance with licensing discipline procedures if the educator violates this Rule 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.

R277-487-4. Retention of Student Data.

(1) An LEA shall classify all student data collected in accordance with Section 63G-2-604.

(2) An LEA shall retain and dispose of all student data in accordance with an approved retention schedule.

(3) If no existing retention schedule governs student disciplinary records collected by an LEA:

(a) An LEA may propose to the State Records Committee a retention schedule of up to one year if collection of the data is not required by federal or state law or Board rule; or

(b) An LEA may propose to the State Records Committee a retention schedule of up to three years if collection of the data is required by federal or state law or Board rule, unless a longer retention period is prescribed by federal or state law or Board rule.

(4) An LEA's retention schedules shall take into account the LEA's administrative need for the data.

(5) Unless the data requires permanent retention, an LEA's retention schedules shall require destruction or expungement of student data after the administrative need for the data has passed.

(6) A parent or adult student may request that an LEA amend, expunge, or destroy any record not subject to a retention schedule under Section 63G-2-604, and believed to be:

(a) inaccurate;

(b) misleading; or

(c) in violation of the privacy rights of the student.

(7) An LEA shall process a request under Subsection (6) following the same procedures outlined for a request to amend a student record in 34 CFR Part 99, Subpart C.

R277-487-5. 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.

R277-487-6. 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 privacy protections;

(d) shall develop and recommend policies to the Board and model policies for LEAs for:

(i) protection of personally identifiable student data;

(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 53E-9-302.

R277-487-7. 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 53E-9-301(22) except with regard to authorized uses of directory information not obtained through a contract with an educational agency or institution.

R277-487-8. 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 data 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 personally identifiable student data that may only be provided in accordance with Section 53E-9-308 and FERPA, 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 R277-487-8.

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; and

(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) A school administrator shall share information requested by parents while ensuring the privacy of individual personally identifiable student data and educator evaluation data.

(2) A school, LEA, the Superintendent, and the Board shall protect individual educator evaluation data.

(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 Parties.

(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 53E-9-301, et seq.

(2) An LEA may release personally identifiable student data and public school enrollment verification data to a third party contractor if:

(a) the release is allowed by, and released in accordance with, Section 53E-9-308, FERPA, and FERPA's 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. Sharing Data With the Utah Registry of Autism and Developmental Disabilities.

(1) The Superintendent shall share personally identifiable student data with the Utah Registry of Autism and Developmental Disabilities as required by Subsection 53E-9-308(6)(b) through a written agreement designating the Utah Registry of Autism and Developmental Disabilities as the authorized representative of the Board for the purpose of auditing and evaluating federal and state supported education programs that serve students with autism and other devlopmental disabilities.

(2) The agreement required by Subsection (1) shall include a provision that:

(a) the Utah Registry of Autism and Developmental Disabilities may not use personally identifiable student data for any purpose not specified in the agreement;

(b) the Utah Registry of Autism and Developmental Disabilities shall flag all student personally identifiable data received from the Board to:

(i) ensure that the data is not used for purposes not covered by the agreement; and

(ii) allow the Superintendent access to the data for auditing purposes;

(c) the Utah Registry of Autism and Developmental Disabilities may redisclose de-identified data if:

(i) the de-identification is in accordance with HIPPA's safe harbor standard;

(ii) the de-identification is in accordance with Board rule; and

(iii) the Utah Registry of Autism and Development Disabilities annually provides the Superintendent with a description and the results of all projects and research undertaken using de-identified student data; and

(d) the Utah Registry of Autism and Developmental Disabilties shall allow an on-site audit conducted by the Superintendent to monitor for compliance with this rule no less than once per year.

(3) The Superintendent shall maintain a record of all personally identifiable student data shared with the Utah Registry of Autism and Developmental Disabilities in accordance with 34 C.F.R. 99.32.

(4)(a) A parent of a child whose personally identifiable student data was shared with the Utah Registry of Autism and Developmental Disabilities has the right to access the exact records disclosed.

(b) A parent identified in Subsection (4)(a) has the right to contest and seek to amend any data that is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.

R277-487-13. 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 the approved research studies using personally identifiable 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.

R277-487-14. 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, privacy

December 10, 2018	**Art X Sec 3**
Notice of Continuation November 14, 2014	**53E-9-302**
	53E-3-401
	53G-11-511

R277. Education, Administration.
R277-488. Dual Language Immersion Program.
R277-488-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53F-2-502, which requires the Board to establish a Dual Language Immersion program; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) establish criteria and procedures for distributing funds to elementary and secondary schools participating in the Dual Language Immersion Program;

(b) increase the number of students who reach proficiency in world languages;

(c) build overall world language capacity in the state of Utah; and

(d) increase the number of biliterate and bilingual students.

R277-488-2. Definitions.

(1) "Dual language immersion" or "DLI" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.

(2) "Secondary school" means grades 7-12 in whatever schools the grade levels exist.

R277-488-3. Dual Language Immersion Program Requirements.

(1) The Superintendent shall disburse DLI program funds by July 1 of each fiscal year subject to state appropriation.

(2) The DLI program shall support world languages approved by the Superintendent.

(3) The Superintendent shall annually provide an application for an LEA to receive funding for DLI programs.

(4) An LEA shall submit an application described in Subsection (3) no later than the deadline specified in the application annually to be considered for elementary school DLI program funding in the subsequent school year.

(5) An application for DLI program funds shall include a plan that includes:

(a) a world language approved by the Superintendent;

(b) a timeline that begins the instructional model in kindergarten or grade 1, adds an additional grade each year; and

(c) a plan and procedure in place to notify students and parents of the availability of at least one DLI course.

(6) The Superintendent shall give priority in DLI program funding to an LEA that:

(a) does not currently teach the requested language choice;

(b) demonstrates adequate local funding and infrastructure to begin a program or expand existing programs;

(c) demonstrates community interest and students committed and prepared to participate in a new or expanded program, including prepared instructors for the program;

(d) has adequate interest, resources, and infrastructure, but does not presently have a DLI program; and

(e) has a demonstrated community need for improved or expanded world language instruction in a specific school or community.

(7) A school receiving DLI program funds shall hire qualified world language teachers who:

(a) have a world language endorsement in the language of instruction and a DLI endorsement; and

(b) are Utah licensed elementary or secondary educators.

R277-488-4. Proficiency Assessment Requirements.

(1) The Superintendent shall select a proficiency assessment through an appropriate procurement process.

(2) The proficiency assessment described in Subsection (1) shall assess the following areas of proficiency:

(a) listening;

(b) speaking;

(c) reading; and

(d) writing.

(3) An LEA DLI program shall administer the proficiency assessment selected by the Superintendent as described in Subsection (1) for certain areas of proficiency listed in subsection (2) at each grade level starting at Grade 3 and through Grade 9.

R277-488-5. International Guest Teacher Requirements.

(1) An LEA may offer world languages through the DLI program using an international guest teacher as outlined in R277-527.

R277-488-6. Dual Language Immersion Funds.

(1) Elementary schools shall be selected for funding for the DLI program based on an evaluation of applications by the Superintendent.

(a) Secondary schools shall receive funding as recipients of DLI students through the regular school feeder system.

(2) The Superintendent shall make an award to an individual elementary or secondary school and allocate funds to the school's LEA to be fully distributed to the school based on the annual legislative funding allocation.

(3) The Superintendent shall notify a new school eligible for funding of a funds award for the subsequent fiscal year by June 1 annually.

R277-488-7. Evaluation and Reports.

(1) Each school selected for funding shall submit an annual evaluation report to the Superintendent.

(2) The Superintendent may request additional data from a secondary or elementary school that receives funding.

KEY: critical languages, dual language immersion

December 10, 2018	**Art X Sec 3**
Notice of Continuation June 6, 2017	**53F-2-502**
	53E-3-401

R277. Education, Administration.
R277-491. School Community Councils.
R277-491-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) provide procedures and clarifying information to a school community council to assist the council in fulfilling school community council responsibilities consistent with Sections 53G-7-1202 through 53G-7-1203;

(b) provide direction to a local school board, school, and school district in establishing and maintaining a school community council;

(c) provide a framework and support for improved academic achievement of students that is locally driven from within an individual school;

(d) encourage increased participation of a parent, school employee, and others to support the mission of a school community council;

(e) increase public awareness of:

(i) school trust lands;

(ii) the permanent State School Fund; and

(iii) educational excellence; and

(f) enforce compliance with the laws governing a school community council.

(3) This rule does not apply to charter schools.

R277-491-2. Definitions.

(1) "Local school board" means the locally elected school board designated in Section 53G-4-201.

(2)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes a specific designee of the principal.

(3) "School community" means the geographic area a school district designates as the attendance area, with reasonable inclusion of a parent of a student who attends the school but lives outside the attendance area.

(4) "Student" means a child in a public school, grades kindergarten through 12, counted on the audited October 1 fall enrollment report.

R277-491-3. School Community Council Member Election Provisions.

(1) In addition to the election notice requirements of Section 53G-7-1202, the principal shall provide notice of:

(a) the location where a ballot may be cast; and

(b) the means by which a ballot may be cast, whether in person, by mail, or by electronic transfer.

(2)(a) A school community council may establish a procedure that allows a parent to mail a ballot to the school in the event the distance between a parent and the voting location would otherwise discourage parental participation.

(b) A mailed or hand-delivered ballot shall meet the same timeline as a ballot voted in person.

(3)(a) A school, school district, or local school board may allow a parent to vote by electronic ballot through a district approved election process that is consistent with the election requirements in Subsection 53G-7-1202(5).

(b) If allowed, the school or school district shall clearly explain on its website the opportunity to vote by electronic means.

(4) In the event of a change in statute or rule affecting the composition of a school community council, a council member who is elected or appointed prior to the change may complete the term for which the member was elected.

(5)(a) A public school that is a secure facility, juvenile detention facility, hospital program school, or other small or special school may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to:

(i) recruit members;

(ii) have meetings; and

(iii) publicize the opportunity to serve on the council.

(b) A local school board shall make the determination whether to grant the exemption for a school described in Subsection (5)(a).

R277-491-4. School Community Council Principal Responsibilities.

(1) Following an election, the principal shall enter and electronically sign on the School LAND Trust Program website a Principal's Assurance Form affirming:

(a) the school community council's election;

(b) that vacancies were filled by election if necessary; and

(c) that the school community council's bylaws or procedures comply with Section 53G-7-1202, Rule R277-477, and this rule.

(2) In addition to the requirements of Subsections 53G-7-1203 (5) and (6), each year the principal shall post the following information on the school's website on or before October 20:

(a) an invitation to a parent to serve on the school community council that includes an explanation of how a parent can directly influence the expenditure of the School LAND Trust Program funds;

(b) the dollar amount the school receives each year from the School LAND Trust Program;

(c) a copy of or link to the current School Improvement Plan as required in Section 53G-7-1204; and

(d) if the School LAND Trust Plan and School Improvement Plan have been consolidated into one, a statement that the local board has consolidated the two plans into one.

R277-491-5. School Community Council Chair Responsibilities.

(1) After the school community council election, the school community council shall annually elect at the council's first meeting a chair and vice chair in accordance with Subsection 53G-7-1202(5)(j).

(2) The school community council chair shall:

(a) set the agenda for every meeting;

(b) conduct every meeting;

(c) keep written minutes of every meeting, consistent with Section 53G-7-1203;

(e) inform council members about resources available on the School LAND Trust Program website; and

(f) welcome and encourage public participation in school community council meetings.

(3) The chair may delegate the responsibilities established in this section as appropriate at the chair's discretion.

R277-491-6. School Community Council Business.

(1)(a) The school community council shall adopt rules of order and procedure to govern a council meeting in accordance with Subsection 53G-7-1203(10).

(b) The rules of order and procedure shall outline the process for:

(i) selecting a chair and vice chair;

(ii) removing from office a member who moves away or fails to attend meetings regularly; and

(iii) a member to declare a conflict of interest if required by the local school board's policy.

(2) The school community council shall:

(a) report on a plan, program, or expenditure at least annually to the local school board; and

(b) encourage participation on the school community council by members of the school community and recruit a potential candidate to run for an open position on the council.

(3)(a) The principal shall provide an annual report to the school community council that summarizes current practices used by the school district and school to facilitate the school community council's responsibilities under Subsections 53G-7-1203(3)(a)(iii)(D), (iv), and (v).

(b) The report described in Subsection (3)(a) shall include:

(i) information concerning internet filtering protocols for school and district devices that access the internet;

(ii) local instructional practices, monitoring, and reporting procedures; and

(iii) internet safety training provided to a student and parent by the school or district.

(c) A school community council's School LAND Trust Program plan may not conflict with the school district's approved LEA plan related to a digital teaching and learning grant awarded to the school district under Title 53F, Chapter 2, Part 5.

(4) A school community council may advise and inform the local school board and other members of the school community regarding the uses of School LAND Trust Program funds.

R277-491-7. Failure to Comply with Rule.

(1) If a local school board, school district, school, or school community council fails to comply with the provisions of this rule, the Superintendent may report the failure to the Audit Committee of the Board.

(2)(a) The Audit Committee shall allow the local school board, school district, school, or school community council to present information to the Audit Committee.

(b) The Audit Committee of the Board may recommend to the Board a reduction or elimination of School LAND Trust funds for a school district or school if the Audit Committee finds that the local school board, school district, school, or school community council has not complied with statute or rule.

(3) Before the Board takes action on the Audit Committee's recommendation, the Board shall allow the local school board, school district, school, or school community council to present information to the Board.

KEY: school community councils

December 10, 2018	**Art X Sec 3**
Notice of Continuation August 13, 2015	**53E-3-401(4)**
	53A-1a-108
	53A-1a-108.1
	53G-7-12

R277. Education, Administration.
R277-495. Required Policies for Electronic Devices in Public Schools.
R277-495-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Electronic device" means a device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.

C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

D. "LEA-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is owned, provided, issued or lent by the LEA to a student or employee.

E. "Privately-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is not owned or issued by the LEA to a student or employee.

F. "Public school" means all schools and public school programs, grades kindergarten through 12, that are part of the Utah Public School system, including charter schools, distance learning programs, and alternative programs.

G. "Student," for purposes of this rule, means any individual enrolled as a student at the LEA regardless of the part-time nature of the enrollment or the age of the individual.

H. "The Children's Internet Protection Act (CIPA)" means regulations enacted by the Federal Communications Commission (FCC) and administrated by the Schools and Libraries Division of the FCC. CIPA and companion laws, the Neighborhood Children's Internet Protection Act (NCIPA) and the Protecting Children in the 21st Century Act, require recipients of federal technology funds to comply with certain Internet filtering and policy requirements.

I. "USOE" means the Utah State Office of Education.

J. "Utah Education Network (UEN)" is a robust network that connects most Utah LEAs, schools, and higher education institutions to quality educational resources and services consistent with Section 53B-17-102.

R277-495-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities, and Subsection 53G-8-202(2)(c)(i) directs the State Superintendent of Public Instruction to develop a conduct and discipline policy model for elementary and secondary public schools, and 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with Internet access to certify they have Internet safety policies and technology protection measures in place in order to receive discounted internet access and services.

B. The purpose of this rule is to direct all LEAs or public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices, both LEA-owned and privately-owned, while on public school premises and, for LEA-owned devices, wherever the devices are used.

R277-495-3. Local Board and Charter School Responsibilities.

A. LEAs shall require all schools under their supervision to have a policy or policies for students, employees and, where appropriate, for invitees, governing the use of electronic devices on school premises and at school sponsored activities.

B. LEAs shall review and approve policies regularly.

C. LEAs shall encourage schools to involve teachers, parents, students, school employees and community members in developing local policies; school community councils could provide helpful information and guidance within various school communities and neighborhoods.

D. LEAs shall provide copies of their policies or clear electronic links to policies at LEA offices, in schools and on the LEA website.

E. LEAs and schools within LEAs shall work together to ensure that all policies within a school or school district are consistent and understandable for parents.

F. LEAs shall provide reasonable public notice and at least one public hearing or meeting to address a proposed or revised Internet safety policy. LEAs shall retain documentation of the policy review and adoption actions.

R277-495-4. Policy Requirements.

A. Local policies shall address the following minimum components:

(1) definitions of devices covered by policy;

(2) prohibitions on the use of electronic devices in ways that bully, humiliate, harass, or intimidate school-related individuals, including students, employees, and invitees, consistent with R277-609 and R277-613, or violate local, state, or federal laws; and

(3) the prohibition of access by students, LEA employees and invitees to inappropriate matter on the Internet and World Wide Web while using LEA equipment, services or connectivity whether on school property or while using school-owned or issued devices;

(4) the safety and security of students when using electronic mail, chat rooms, and other forms of direct electronic communications (including instant messaging);

(5) unauthorized access, including hacking and other unlawful activities by LEA electronic device users; and

(6) unauthorized disclosure, use and dissemination of personal student information under the Family Educational Rights and Privacy Act, 34 CFR, Part 99.

B. Additional requirements for student policies - In addition to the provisions of R277-495-4A, policies for student use of electronic devices shall include:

(1) prohibitions against use of electronic devices during standardized assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;

(2) provisions that inform students that there may be administrative and criminal penalties for misuse of electronic devices and that local law enforcement officers may be notified if school employees believe that a student has misused an electronic device in violation of the law;

(3) provisions that inform students that violation of LEA acceptable use policies may result in confiscation of LEA-owned devices which may result in missed assignments, inability to participate in required assessments and possible loss of credit or academic grade consequences;

(4) provisions that inform students that they are personally responsible for devices assigned or provided to them by the LEA, both for loss or damage of devices and use of devices consistent with LEA directives;

(5) provisions that inform students and parents that use of electronic devices in violation of LEA or teacher instructional policies may result in the confiscation of personal devices for a designated period; and

(6) provisions that inform students that use of privately-owned electronic devices to bully or harass other students or employees and result in disruption at school or school-sponsored activities may justify administrative penalties, including expulsion from school and notification to law enforcement.

C. Additional requirements for employee policies - In addition to the provisions of R277-495-4A, policies for

employee use of electronic devices shall include:

(1) notice that use of electronic devices to access inappropriate or pornographic images on school premises is illegal, may have both criminal and employment consequences, and where appropriate, shall be reported to law enforcement;

(2) notice that employees are responsible for LEA-issued devices at all times and misuse of devices may have employment consequences, regardless of the user; and

(3) notice that employees may use privately-owned electronic devices on school premises or at school sponsored activities when the employee has supervisory duties only as directed by the employing LEA; and

(4) required staff responsibilities in educating minors on appropriate online activities and in supervising such activities.

D. Local policies may also include the following:

(1) prohibitions or restrictions on unauthorized audio recordings, capture of images, transmissions of recordings or images, or invasions of reasonable expectations of student and employee privacy;

(2) procedures to report the misuse of electronic devices;

(3) potential disciplinary actions toward students or employees or both for violation of local policies regarding the use of electronic devices;

(4) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any; and

(5) strategies for use of technology that enhance instruction.

E. An LEA shall certify annually to the USOE and as required by the FCC, that the LEA has a CIPA-compliant Internet safety policy.

R277-495-5. Board and USOE Responsibilities.

A. The Board and USOE shall provide resources, upon request, for LEAs and public schools as they develop and update electronic device policies, including sources for successful policies, assistance with reviewing draft policies and amendments, and information about bullying, harassing, and discrimination via electronic devices consistent with R277-613.

B. The Board and USOE shall develop or provide a model policy or a policy framework to assist LEAs and public schools in developing and implementing their policies.

C. The Board and USOE shall promote the use of effective strategies to enhance instruction and professional development through technology.

D. The Board and USOE shall ensure that parents and school employees are involved in the development and implementation of policies.

E. The Board and USOE shall work and cooperate with other education entities, such as the PTA, the Utah School Boards Association, the Utah Education Association, the State Charter School Board and the Utah High School Activities Association to provide consistent information to parents and community members about electronic device policies and to provide for appropriate and consistent penalties for violation of policies, including violations that take place at public school extracurricular and athletic events.

KEY: electronic devices, policy
April 7, 2014 **Art X Sec 3**
Notice of Continuation December 7, 2018 **53E-3-401(4)**
53G-8-202(2)(c)(I)

R277. Education, Administration.
R277-496. K-3 Reading Software Licenses.
R277-496-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and

(c) Subsection 53F-4-203(2), which directs the Board to distribute software licenses for the early interactive reading software program to LEAs that apply for the licenses.

(2) The purpose of this rule is to establish criteria and procedures to administer the K-3 reading software program.

R277-496-2. Definitions.

(1) "Aggregate student population" means the total number of students within a school who are using a technology provider's early interactive reading software licenses.

(2) "Dosage" means amount of instruction time.

(3) "Early interactive reading software" or "K-3 reading software license" means technology tools and software that adjust the presentation of educational material according to a student's weaknesses and strengths, as indicated by the student's responses to questions.

(4) "Personalized fidelity" means local measures for fidelity to a software product based on three or more data points that demonstrate successful student outcomes at or above the level of student outcomes achieved by the technology provider's dosage recommendations.

(5) "Use early interactive reading software in accordance with a technology provider's dosage recommendations" means when at least 80% of the aggregate student population of a school, by provider:

(a) uses a technology provider's K-3 reading software for at least 80% of:

(i) the minimum number of weeks of use recommended by the technology provider for the K-3 reading software program;

(ii) the average number of minutes of use recommended by the technology provider for the K-3 reading software program or

(b) demonstrates personalized fidelity per programmatic requirements.

R277-496-3. K-3 Reading Software Licenses.

(1) The Superintendent shall select one or more technology providers through an RFP to provide early interactive reading software for students in kindergarten through grade 3.

(2) A school may apply for early interactive reading software for students in kindergarten through grade 3.

(3) The Superintendent shall accept applications from LEAs for early interactive reading software licenses that satisfy the requirements of Section 53F-4-203 and the provisions of this rule.

(4) If the number of requests for K-3 reading software licenses exceeds the number of licenses available, the Superintendent shall give priority to:

(a) requests for licenses to be used in Kindergarten or grade 1; or

(b) a school that:

(i) received a K-3 reading license in a previous school year; and

(ii) used the K-3 reading license in accordance with the technology provider's dosage recommendations.

(5) The Superintendent shall establish timelines for submission of applications.

(6) A school may not require a student to participate in the K-3 reading software license program.

R277-496-4. School Probationary Re-entry Into the Program.

(1) If a school does not use the early interactive reading software licenses in accordance with the technology provider's dosage recommendations, the school may not receive K-3 reading software licenses for one year.

(2) A school described in Subsection (1) may reapply to re-enter the program on a probationary basis and receive K-3 reading software licenses if the school meets the probation requirements of this Section R277-496-4.

(3) A school is on probation if the school:

(a) previously received K-3 reading software licenses;

(b) lost eligibility to participate in the program, which includes failure to use the early interactive software per the technology provider's dosage recommendations for two consecutive years; and

(c) receives K-3 reading software licenses after re-entering the program.

(4)(a) The school principal, instructional leaders, and teachers of a school on probation shall engage in all of the available technology provider support structures and interventions for probationary software programs, including:

(i) data dives;

(ii) professional learning; and

(iii) usage and fidelity updates.

(b) A technology provider shall establish the specific support structure requirements and interventions described in Subsection (4)(a) for the technology provider's software program.

(5) If a technology provider does not offer support structure requirements and interventions as described in Subsection (4), the Superintendent may not make the technology provider's software available for a school that is on probation.

(6) If a school on probation does not use the early interactive reading software licenses in accordance with a technology provider's dosage recommendations during the probationary year, the school may not receive an early interactive reading license for the following year unless the school on probation pays for 50% of the costs of the K-3 reading license software license.

R277-496-5. Reporting.

(1) An LEA that receives K-3 reading software licenses shall provide information that is requested by the Superintendent or external evaluator selected by the Board in conducting the evaluation required in Subsection 53F-4-203(3) and (4).

(2) The Superintendent may recommend action to the Board, including withholding of funds, in accordance with Rule R277-114 for an LEA that fails to provide complete, accurate, and timely reporting as required by this rule.

KEY: reading, software, licenses
December 10, 2018 **Art X Sec 3**
53E-3-401(4)
53F-4-203

R277. Education, Administration.
R277-620. Suicide Prevention Programs.
R277-620-1. Authority and Purpose.

(1) This rule is authorized under:

(a) Utah Constitution Article X Section 3 which vests general control and supervision of public education in the Board; and

(b) Section 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purposes of this rule are:

(a) to provide for collaboration with the Department of Health and Department of Human Services to establish, oversee, and provide model policies, programs for an LEA and training for parents about youth suicide prevention programs;

(b) to require an LEA to have and update youth protection policies; and

(c) to direct an LEA to send notice to parents and protect the confidentiality of the required parent notification record regarding bullying and suicide incidents.

R277-620-2. Definitions.

(1) "Adverse Childhood Experiences Study" or "ACES" means the study conducted on potentially traumatic events that can have negative, lasting effects on health, learning, and well-being as defined by the American Journal of Preventive Medicine.

(2) "Intervention" means an effort to prevent a student from attempting suicide.

(3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "Parent notification" means a notice provided by a public school to a students' parent(s) consistent with Section 53G-9-604(2) and 53G-9-605(3)(e).

(5) "Postvention" means mental health intervention after a suicide attempt or death to prevent or contain contagion.

(6) "Program for secondary grades" means a youth suicide prevention program for students in grades 7 through 12, including grade 6 if middle or junior high school includes grade 6.

(7) "State suicide prevention coordinator" means the person designated by the Department of Health - State Division of Substance Abuse and Mental Health in Section 62A-15-1101.

(8) "Youth protection and mental health seminar" means a seminar offered for each 11,000 students enrolled in a school district to parents of students consistent with Section 53G-9-702.

R277-620-3. Youth Suicide Prevention Grants - LEA Reporting Requirements.

(1) The Superintendent, in collaboration with the Department of Health - State Division of Substance Abuse and Mental Health and the State suicide prevention coordinator, shall establish model youth suicide prevention programs for LEAs that include training and resources addressing:

(a) prevention of youth suicides;

(b) standard response protocols that utilize trauma informed practices, which may reference the ACES or other empirical data;

(c) youth suicide intervention; and

(d) postvention for family, students, and faculty.

(2) Based on legislative appropriation, the Board shall distribute funds to LEAs to support suicide prevention efforts in the school district or charter school.

(a) An LEA may use the awarded funds to select and implement:

(i) evidenced-based practices and programs; or

(ii) emerging best practices and programs.

(3) An LEA shall implement youth suicide prevention programs for students in secondary grades, including grades 7 through 12 and grade 6, if grade 6 is part of a secondary grade model.

(4) An LEA's youth suicide prevention program shall include the components provided in Subection 53G-9-702(2).

(5) An LEA shall establish a policy governing the required parent notification outlined in Sections 53G-9-604(2) and 53G-9-605(3)(e) and Subsection R277-613-4.

(6) An LEA shall provide necessary reporting information consistent with Subection 53G-9-702(7) for the Board's report on the coordination of suicide prevention programs and seminar program implementation to the Legislature's Education Interim Committee.

KEY: public schools, suicide prevention programs, parent notifications, seminars

December 10, 2018	**Art X Sec 3**
Notice of Continuation October 5, 2018	**53E-3-401(3)**

R309. Environmental Quality, Drinking Water.
R309-105. Administration: General Responsibilities of Public Water Systems.
R309-105-1. Purpose.

The purpose of this rule is to set forth the general responsibilities of public water systems, water system owners and operators.

R309-105-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-105-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-105-4. General.

(1) Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, water quality, water treatment, contaminant monitoring, source protection, operation and maintenance of public water supplies.

(2) For compliance monitoring required by R309-200 through 215, public water systems must use a laboratory certified by the Utah Public Health Department in accordance with R444-14-4. The Federal Safe Drinking Water Act requires each analyte to be analyzed by a specific method. These methods are described in the July 1, 1992 through 2015, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act).

R309-105-5. Exemptions from Monitoring Requirements.

(1) The applicable requirements specified in R309-205, R309-210 and R309-215 for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(2) When a public water system supplies water to one or more other public water systems, the Director may modify the monitoring requirements imposed by R309-205, R309-210 and R309-215 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(3) In no event shall the Director authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

R309-105-6. Construction of Public Drinking Water Facilities.

The following requirements pertain to the construction of public water systems.

(1) Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5, shall be approved in writing (Plan Approval) by the Director prior to the commencement of construction. The Director may also authorize the Engineering Manager for the Division to issue Plan Approvals. A minimum 30-day review time should be assumed.

(b) Appropriate engineering reports, supporting information and master plans may also be required by the Director as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, shall be filed with the Director prior to approval of any plans or specifications for projects described in R309-500-4(1) as new or previously un-reviewed water system.

(2) Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities shall conform to the applicable standards contained in R309-500 through R309-550 of these rules. The Division may require modifications to plans and specifications before approval is granted.

(b) There may be times in which the requirements of the applicable standards contained in R309-500 through R309-550 are not appropriate. Thus, the Director may grant an "exception" to portions of these standards if it can be shown that the granting of such an exception will not jeopardize the public health. The Director may also authorize the Engineering Manager for the Division to grant exceptions to the separation requirements under R309-550-7 if the requirements of this rule are met. In order for the Division to consider such a request, the public drinking water system shall submit a written request directly from the management of the public drinking water system, preferably on system letterhead, that includes the following:

(i) citation of the specific rule for which the "exception" is being requested;

(ii) a detailed explanation, drawings may be included, of why the conditions of rule cannot be met;

(iii) what the system proposes, drawings may be included, in lieu of rule;

(iv) justification the proposed alternative will protect the public health to a similar or better degree than required by rule.

Physical conditions as well as cost may be justification for requesting an "exception-to-rule."

(c) Alternative or new treatment techniques may be developed which are not specifically addressed by the applicable standards contained in R309-500 through R309-550. These treatment techniques may be accepted by the Director if it can be shown that:

(i) They will result in a finished water meeting the requirements of R309-200 of these regulations.

(ii) The technique will produce finished water which will protect public health to the same extent provided by comparable treatment processes outlined in the applicable standards contained in R309-500 through R309-550.

(iii) The technique is as reliable as any comparable treatment process governed by the applicable standards contained in R309-500 through R309-550.

(3) Description of "Public Drinking Water Project"

Refer to R309-500-5 for the description of a public drinking water project and R309-500-6 for required items to be submitted for plan approval.

(4) Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Director.

(5) Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings which are illegible or of unusual size will not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(6) Requirements After Approval of Plans for Construction

After the approval of plans for construction, and prior to operation of any facilities dealing with drinking water, the items required by R309-500-9 shall be submitted and an operating permit received.

R309-105-7. Source Protection.

(1) Public Water Systems are responsible for protecting their sources of drinking water from contamination. R309-600 and R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

(2) R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water.

(3) R309-605 applies to PWSs which obtain surface water prior to treatment and distribution and to PWSs obtaining water from ground-water sources which are under the direct influence of surface water. However, compliance with this rule is voluntary for public transient non-community water systems to the extent that they are using existing surface water sources of drinking water.

R309-105-8. Existing Water System Facilities.

(1) All public water systems shall deliver water meeting the applicable requirements of R309-200 of these rules.

(2) Existing facilities shall be brought into compliance with R309-500 through R309-550 or shall be reliably capable of delivering water meeting the requirements of R309-200.

(3) In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management shall solve the problem(s).

R309-105-9. Minimum Water Pressure.

(1) Unless otherwise specifically approved by the Director, no water supplier shall allow any connection to the water system where the dynamic water pressure at the point of connection will fall below 20 psi during the normal operation of the water system. Water systems approved prior to January 1, 2007, are required to maintain the above minimum dynamic water pressure at all locations within their distribution system. Existing public drinking water systems, approved prior to January 1, 2007, which expand their service into new areas or supply new subdivisions shall meet the minimum dynamic water pressure requirements in R309-105-9(2) at any point of connection in the new service areas or new subdivisions.

(2) Unless otherwise specifically approved by the Director, new public drinking water systems constructed after January 1, 2007 shall be designed and shall meet the following minimum water pressures at points of connection:

(a) 20 psi during conditions of fire flow and fire demand experienced during peak day demand;

(b) 30 psi during peak instantaneous demand; and

(c) 40 psi during peak day demand.

(3) Individual home booster pumps are not allowed as indicated in R309-540-5(4)(c).

R309-105-10. Operation and Maintenance Procedures.

All routine operation and maintenance of public water supplies shall be carried out with due regard for public health and safety. The following sections describe procedures which shall be used in carrying out some common operation and maintenance procedures.

(1) Chemical Addition

(a) Water system operators shall determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with ANSI/NSF Standard 60.

(b) No chemicals or other substances shall be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Director.

(c) Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Director. Residual checks shall be taken a minimum of three times each week by the operator of any system using disinfectants. The Director may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, shall use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

(2) New and Repaired Mains

(a) All new water mains shall meet the requirements of R309-550-6 with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The chlorine solution shall be flushed from the water main with potable water prior to the main being placed in use.

(c) All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with ANSI/NSF Standard 61.

(3) Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it shall be disinfected prior to being placed into service. Procedures given in AWWA Standard C651-92 shall be followed in this regard.

(4) Spring Collection Area Maintenance

(a) Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Director. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product

manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development meets the requirements of these rules (see R309-515-7).

(5) Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities shall be secure.

(6) Seasonal Operation

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-92 and C652-92 prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

(7) Pump Lubricants

All oil lubricated pumps for culinary wells shall utilize mineral oils suitable for human consumption as determined by the Director. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

R309-105-11. Operator Certification.

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water shall have an appropriately certified operator in accordance with the requirements of these rules. Refer to R309-300, Certification Rules for Water Supply Operators, for specific requirements.

R309-105-12. Cross Connection Control.

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly or device. The requirements of the International Plumbing Code and its amendments as adopted by the Department of Commerce shall be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

(a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);

(b) providing public education or awareness material or presentations;

(c) an individual with adequate training in the area of cross connection control or backflow prevention;

(i) Community water systems serving a population of 500 or greater shall have a certified Cross Connection Control Program Administrator by December 31, 2020. Refer to R309-305 for specific requirements.

(ii) Community water systems serving a population less than 500 shall have a certified Cross Connection Control Program Administrator by December 31, 2022. Refer to R309-305 for specific requirements.

(iii) Non-transient non-community and transient non-community water systems may be required to have a certified Cross Connection Control Program Administrator at the Director's discretion.

(d) written records of cross connection control activities, such as, backflow assembly inventory; and

(e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities.

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, spill resistant pressure vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall be in-line serviceable (repairable), in-line testable and have approval through third party approval agencies to be used within a public drinking water system. Third party approval shall consist of any combination of two approvals, laboratory or field, performed by a recognized testing organization which has demonstrated competency to perform such tests.

(5) Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the assembly tested.

(6) Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

R309-105-13. Finished Water Quality.

All public water systems are required to monitor their water according to the requirements of R309-205, R309-210 and R309-215 to determine if the water quality standards of R309-200 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220.

R309-105-14. Operational Reports.

(1) Written Operational Reports.

(a) If, in the opinion of the Director, a water system is not properly operated, the Director may require a public water system to submit a written operational report covering the operation of the whole or a part of the water system's infrastructure.

(b) The Director may require revisions to the submitted operational report to ensure satisfactory operation, and may order the water system to follow the operational report.

(c) If the water system fails to implement the provisions of the operational report, as evidenced by unsatisfactory delivery of a safe and/or reliable supply of drinking water, the Director may order further remedies as deemed necessary.

(2) Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Director (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c).

(b) Certifications may rely on manufacturer's data.

(3)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Director.

R309-105-15. Report Submittal.

(1) A public water system shall submit water use data if required by a state agency and shall verify the accuracy of the data by including a certification by a certified operator or a professional engineer performing the duties of a certified

operator.

(2) A public water system shall comply with the report submittal requirements of the R309 rules.

R309-105-16. Reporting Test Results.

(1) If analyses are made by certified laboratories other than the state laboratory, these results shall be forwarded to the Division as follows:

(a) The supplier shall report to the Division the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-200. Except where a different reporting period is specified in R309-205, R309-210 or R309-215, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division may be reached at (801)536-4200.

(b) Monthly summaries of bacteriologic results shall be submitted within ten days following the end of each month.

(c) All results of TTHM samples shall be reported to the Division within 10 days of receipt of analysis for systems monitoring pursuant to R309-210-9.

(d) For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Division shall not exceed 40 days.

(e) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(f) There are additional reporting requirements in other sections of the rules, see R309-215-16(5).

(2) Disinfection byproducts, maximum residual disinfectant levels and disinfection byproduct precursors and enhanced coagulation or enhanced softening. This section applies to the reporting requirements of R309-210-8, R309-215-12 and R309-215-13. For the reporting requirements of R309-210-9, R309-210-10 and R309-215-15 are contained within R309-210-9, R309-210-10 and R309-215-15, respectively.

(a) Systems required to sample quarterly or more frequently shall report to the State within 10 days after the end of each quarter in which samples were collected. Systems required to sample less frequently than quarterly shall report to the State within 10 days after the end of each monitoring period in which samples were collected. The Director may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(b) Disinfection byproducts. Systems shall report the information specified.

(i) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) on a quarterly or more frequent basis shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of all samples taken in the last quarter.

(D) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

(E) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(ii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than quarterly (but at least annually) shall report:

(A) The number of samples taken during the last year.

(B) The location, date, and result of each sample taken during the last monitoring period.

(C) The arithmetic average of all samples taken over the last year.

(D) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than annually shall report:

(A) The location, date, and result of the last sample taken.

(B) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iv) Systems monitoring for chlorite under the requirements of R309-210-8(2) shall report:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

(C) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

(D) Whether, based on R309-210-8(6)(b)(ii), the MCL was violated.

(v) System monitoring for bromate under the requirements of R309-210-8(2) shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether, based on R309-210-8(6)(b)(iii), the MCL was violated.

(c) Disinfectants. Systems shall report the information specified to the Director within ten days after the end of each month the system serves water to the public, except as otherwise noted:

(i) Systems monitoring for chlorine or chloramines under the requirements of R309-210-8(3)(a) shall report and certify, by signing the report form provided by the Director, that all the information provided is accurate and correct and that any chemical introduced into the drinking water complies with ANSI/NSF Standard 60:

(A) The number of samples taken during each month of the last quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) The additional data required in R309-210-8(3)(a)(ii).

(E) Whether, based on R309-210-8(6)(c)(i), the MRDL was violated.

(ii) Systems monitoring for chlorine dioxide under the requirements of R309-210-8(3) shall report:

(A) The dates, results, and locations of samples taken during the last quarter.

(B) Whether, based on R309-210-8(6)(c)(ii), the MRDL was violated.

(C) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems shall report the information specified.

(i) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and required to meet the enhanced coagulation or enhanced softening requirements in R309-215-13(2)(b) or (c) shall report:

(A) The number of paired (source water and treated water) samples taken during the last quarter.

(B) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

(C) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(D) Calculations for determining compliance with the

TOC percent removal requirements, as provided in R309-215-13(3)(a).

(E) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in R309-215-13(2) for the last four quarters.

(ii) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and meeting one or more of the alternative compliance criteria in R309-215-13(1)(b) or (c) shall report:

(A) The alternative compliance criterion that the system is using.

(B) The number of paired samples taken during the last quarter.

(C) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(D) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in R309-215-13(1)(b)(i) or (iii) or of treated water TOC for systems meeting the criterion in R309-215-13(1)(b)(ii).

(E) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in R309-215-13(1)(b)(v) or of treated water SUVA for systems meeting the criterion in R309-215-13(1)(b)(vi).

(F) The running annual average of source water alkalinity for systems meeting the criterion in R309-215-13(1)(b)(iii) and of treated water alkalinity for systems meeting the criterion in R309-215-13(1)(c)(i).

(G) The running annual average for both TTHM and HAA5 for systems meeting the criterion in R309-215-13(1)(b)(iii) or (iv).

(H) The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in R309-215-13(1)(c)(ii).

(I) Whether the system is in compliance with the particular alternative compliance criterion in R309-215-13(1)(b) or (c).

(3) The public water system, within 10 days of completing the public notification requirements under R309-220 for the initial public notice and any repeat notices, shall submit to the Division a certification that it has fully complied with the public notification regulations. The public water system shall include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

(4) All samples taken in accordance with R309-215-6 shall be submitted within 10 days following the end of the operational period specified for that particular treatment. Finished water samples results for the contaminant of concern that exceed the Primary Drinking Water Standards of R309-200, shall be reported to the Division within 48 hours after the supplier receives the report. The Division may be reached at (801) 536-4000.

(5) Documentation of operation and maintenance for point-of-use or point-of-entry treatment units shall be provided to the Division annually. The Division shall receive the documentation by January 31 annually.

R309-105-17. Record Maintenance.

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of microbiological analyses and turbidity analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(a) The date, place and time of sampling, and the name of the person who collected the sample;

(b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.

(c) Date of analysis;

(d) Laboratory and person responsible for performing analysis;

(e) The analytical technique/method used; and

(f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Director determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Director pursuant to R309-105-16 shall be kept for three years after issuance.

(8) Copies of monitoring plans developed pursuant to these rules shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under R309-105-17(1), except as otherwise specified. In all cases the monitoring plans shall be kept as long as the any associated report.

(9) A water system must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the Director modifies the R309-210-10 monitoring requirements that you recommended in your IDSE report or if the Director approves alternative monitoring locations, you must keep a copy of the Director's notification on file for 10 years after the date of the Director's notification. You must make the IDSE report and any Director notification available for review by the Director or the public.

(10) A water system must retain a complete copy of its 40/30 certification submitted under this R309-210-9 for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any Director notification available for review by the Director or the public.

(11) A water subject to the disinfection profiling requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

(12) A water system subject to the disinfection benchmarking requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

R309-105-18. Emergencies.

(1) The Director or the local health department shall be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the

following:

(a) The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

(b) The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

(c) Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

(d) An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

(e) A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the quality of the delivered water.

(f) Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

(2) If an emergency situation exists, the water supplier shall then contact the Division in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

(3) All suppliers are advised to develop contingency plans to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage shall be realistically considered.

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R309. Environmental Quality, Drinking Water.
R309-305. Cross Connection Control and Backflow Prevention Certification.
R309-305-1. Purpose.

The purpose of this rule is to:

(1) adopt standards for the training, examination, and certification of persons engaged in:

(a) administration of cross connection control programs for public water systems;

(b) repair and testing of backflow prevention assemblies at public water systems; and

(c) instruction or examination monitoring for backflow assembly tester certification.

(2) establish certification fee requirements; and

(3) establish the Cross Connection Control Commission and its responsibilities.

R309-305-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(4)(a) of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-305-3. Definitions.

(1) Definitions for certain terms used in this rule are given in R309-110.

(2) In addition to terms defined in R309-110:

(a) "Accredited Agency" means a third-party organization approved by the Cross Connection Control Commission to provide written and performance examinations for Backflow Assembly Tester certification;

(b) "Backflow Assembly Tester" means a person certified under this rule to conduct testing of backflow prevention assemblies;

(c) "Backflow Proctor/Trainer" means a person qualified to instruct cross connection control certification courses and to act as a proctor or exam monitor for cross connection control certification examinations;

(d) "Cross Connection Control Program Administrator" means a person certified under this rule to administer a cross connection control program for a public drinking water system;

(e) "Performance examination" means a closed-book, hands-on demonstration of an applicant's ability to conduct an accurate field test of backflow assemblies; and

(f) "Written examination" means a closed-book examination for record to determine the competency and ability of an applicant to understand the requirements.

R309-305-4. Cross Connection Control Commission.

(1) Cross Connection Control Commission Organization and Members.

(a) The Director may establish a Cross Connection Control Commission.

(b) The Commission shall consist of seven members representing the following sectors:

(i) One member who represents community water systems.

(ii) One member who represents the plumbing trade and is a licensed Journeyman Plumber.

(iii) One member who represents the mechanical trade contractors.

(iv) One member who represents the non-union plumbing and mechanical contractors and plumbers.

(v) One member who represents small public water systems.

(vi) One member who represents Backflow Assembly Testers and Cross Connection Control Program Administrators and is certified as either.

(vii) One member who represents plumbing inspection officials and is a licensed plumbing inspector.

(c) Commission members shall be appointed by the Director. The Director may consider or accept nominations made by entities representing specific sectors.

(2) Cross Connection Control Commission Responsibilities. The Cross Connection Control Commission may:

(a) advise the Director concerning the training, examination, and certification of persons engaged in cross connection control and backflow prevention for public water systems;

(b) review findings and recommend to the Director suspension or revocation of certificates; and

(c) review and accept certification training courses.

(3) Cross Connection Control Commission Operations.

(a) Each appointed Commission member shall serve a two-year term.

(b) The Commission shall annually elect, at a minimum, a chairperson and a vice chairperson to conduct the business of the Commission.

(c) The Commission shall meet at least twice a year.

(d) Four members shall be present to constitute a quorum to conduct the Commission's business.

(e) A vote by a majority of the members present shall be required for the Commission to take an action.

R309-305-5. Secretary to the Cross Connection Control Commission.

(1) The Director shall appoint a Secretary to the Commission.

(2) The Secretary's responsibilities may include:

(a) coordinating the Commission's business;

(b) bringing pertinent issues before the Commission;

(c) being a liaison between the Commission and persons certified under this rule, public water systems, and the public;

(d) maintaining records to implement and enforce the requirements of this rule;

(e) coordinating nominations to the Commission;

(f) coordinating and reviewing public water system cross connection control programs and training and certifications in the cross connection control and backflow prevention program;

(g) processing applications for certification and renewals;

(h) investigating and verifying all complaints against or concerning certified Backflow Assembly Testers, Cross Connection Control Program Administrators, and Backflow Proctor/Trainers, and inform the Director regarding any enforcement actions that are being recommended by the Commission;

(i) administering examinations; and

(j) making recommendations to the Director regarding cross connection control certifications.

R309-305-6. Cross Connection Control and Backflow Prevention Certifications.

(1) Two types of certification may be obtained by persons engaged in cross connection control or backflow prevention for public water systems:

(a) Cross Connection Control Program Administrator; and

(b) Backflow Assembly Tester.

(2) To obtain either of the above certifications, a person must comply with the training and examination requirements specified in the following sections.

R309-305-7. Cross Connection Control Program Administrator Certification.

(1) Application for a Certificate.

(a) To obtain a Program Administrator Certificate, a person shall:

(i) complete a certification course of at least 18 hours,

including examination time, approved by the Cross Connection Control Commission;

(ii) pass a written examination accepted by the Cross Connection Control Commission by correctly answering 70% or more of the questions;

(iii) submit a complete application to the Director; and

(iv) pay the required fee.

(b) A Program Administrator Certificate issued by the Director is valid for one year from the date of issuance.

(c) A Program Administrator Certificate may be renewed annually by meeting the renewal requirements below.

(2) Certificate Renewal.

(a) A Program Administrator Certificate may be renewed:

(i) for a period of one year; and

(ii) an unlimited number of times.

(b) To renew a certificate, a person shall:

(i) complete a minimum of 0.6 Continuing Education Units (CEU's) annually;

(ii) submit evidence of CEU's completed to the Commission Secretary; and

(iii) pay the required fee.

(c) Continuing Education Units shall:

(i) be specific to cross connection control or backflow prevention; and

(ii) be approved by the Commission Secretary.

(3) Certificate Expiration. A Program Administrator Certificate expires if a person fails to fulfill the requirements to maintain the certification.

(4) Program Administrator Responsibilities.

(a) A person with a valid Program Administrator Certificate may perform the following specifically regarding cross connection control and backflow prevention:

(i) review plans and designs for compliance;

(ii) investigate and assess hazards;

(iii) inspect facilities for compliance;

(iv) enforce local laws, codes, rules, and policies; and

(v) provide technical assistance.

(b) A Program Administrator may test a backflow assembly only for the purpose of assuring that proper testing techniques are being used within a water system's jurisdiction.

(5) Program Administrator Certificate Restrictions.

A person with a valid Program Administrator Certificate may not perform the following specifically regarding a backflow prevention assembly:

(a) test, maintain, or repair the assembly for the purpose of legally documenting the operational status of the assembly; or

(b) perform a test for record demonstrating compliance of the assembly with required standards.

R309-305-8. Backflow Assembly Tester Certification.

(1) Application for a Certificate.

(a) To obtain a Backflow Assembly Tester Certificate, a person shall:

(i) complete a certification course accepted by the Cross Connection Control Commission;

(ii) pass a written examination offered by an Accredited Agency accepted by the Cross Connection Control Commission;

(iii) successfully demonstrate competence and ability in a performance examination offered by an Accredited Agency accepted by the Cross Connection Control Commission for the testing of:

(A) a pressure vacuum breaker assembly,

(B) a spill resistant pressure vacuum breaker assembly,

(C) a double check valve assembly, and

(D) a reduced pressure principal backflow prevention assembly;

(iv) submit a complete application, including a valid certificate issued by an Accredited Agency accepted by the Cross Connection Control Commission, to the Commission Secretary; and

(v) pay the required fee.

(b) A Backflow Assembly Tester Certificate issued by the Director is valid for three years from the date of issuance.

(c) A Backflow Assembly Tester Certificate may be renewed by meeting the renewal requirements below.

(2) Certificate Renewal.

(a) A Backflow Assembly Tester Certificate may be renewed:

(i) for a period of three years; and

(ii) an unlimited number of times.

(b) To renew a certificate, a person shall:

(i) complete the written and performance examination requirements of R309-305-8(1)(a)(ii) and (iii);

(ii) submit a renewal application; and

(iii) pay the required fee.

(3) Certificate Expiration.

(a) A Backflow Assembly Tester Certificate expires if a person fails to complete the certificate renewal requirements of R309-305-8(2).

(b) A Backflow Assembly Tester with an expired certificate may not test, maintain, or repair a backflow assembly for the purpose of legally documenting the operational status of the assembly.

(4) Backflow Assembly Tester Obligations. A person with a valid Backflow Assembly Tester Certificate shall:

(a) notify the Division of Drinking Water, local health department, and the appropriate public water system of any backflow incident as soon as possible and within eight hours of discovery;

(b) notify the appropriate public water system of a failing backflow prevention assembly within five days;

(c) ensure that acceptable and approved procedures are used for testing, repairing, and maintaining a backflow prevention assembly;

(d) report backflow prevention assembly test results to the appropriate public water system within 30 days;

(e) include, on the test report form, any materials or replacement parts used to repair or to perform maintenance on a backflow prevention assembly;

(f) ensure that the quality of a replacement part is equal to or greater than the quality of the part originally supplied within the backflow prevention assembly and is supplied only by the assembly manufacturer or its agent;

(g) perform each test and be responsible for the competency and accuracy of all testing and reporting;

(h) ensure that Backflow Assembly Tester certification is current;

(i) be equipped with and competent in the use of all tools, gauges, and equipment necessary to properly test, repair, and maintain a backflow prevention assembly; and

(j) be responsible for any additional licensure.

(5) Backflow Assembly Tester Restrictions.

A person with a valid Backflow Assembly Tester Certificate may not change the design, material, or operational characteristics of the assembly during any repair or maintenance.

R309-305-9. Proctor/Trainer for Backflow Assembly Tester Qualifications.

A proctor or trainer for Backflow Assembly Tester Certification shall maintain a current proctor certificate issued by an Accredited Agency accepted by the Cross Connection Control Commission.

R309-305-10. Certification Suspension and Revocation.

(1) A certificate may be suspended or revoked for unacceptable or unprofessional conduct, including:

(a) acting in disregard for public health or safety;

(b) engaging in activities beyond the scope of certification;
(c) misinterpreting or falsifying figures or reports concerning backflow prevention assembly or test results;
(d) failing to notify proper authorities of a known backflow incident, as required by R309-305-8(4)(a);
(e) failing to notify proper authorities of a failed backflow prevention assembly within five days, as required by R309-305-8(4)(b);
(f) installing or repairing a backflow prevention assembly that is not certified; or
(g) implementing a change in the design, material, or operational characteristics of a certified backflow prevention assembly thereby invalidating the backflow assembly certification.
(2) The Commission Secretary shall investigate unprofessional or unacceptable conduct.
(3) The Commission shall evaluate the investigation findings and make a recommendation to the Director regarding certification suspension or revocation.
(4) The Commission Secretary shall notify a person in writing of the Commission's recommendation if certification is being considered for suspension or revocation.
(5) The Director may suspend or revoke a certificate based on the Commission's recommendation.

R309-305-11. Certification Fees.
(1) Certification fees shall be:
(a) paid by the applicant to the Division of Drinking Water prior to issuance or renewal of a certificate according to the Department of Environmental Quality fee schedule; and
(b) used for administering the Cross Connection Control and Backflow Prevention Certification program.
(2) Certification fees are non-refundable.

KEY: drinking water, cross connection control, backflow assembly tester
January 1, 2019 19-4-104(4)(a)
Notice of Continuation March 13, 2015 63G-3

R357. Governor, Economic Development.
R357-3. Economic Development Tax Increment Financing Rule.
R357-3-101. Title.

This rule is known as the "Economic Development Tax Increment Financing Rule."

R357-3-102. Definitions.

In addition to the definitions in Title 63N, Chapter 2, Section 103 as defined or used in this rule:

(1) "Board" means the Board of Business and Economic Development created in Section 63N-1-401.

(2) "Direct investment within the geographic boundaries ", as used in Subsection 63N-2-104(2)(b)(ii), means that the applicant for the tax credit will invest in a new commercial project in the economic development zones.

(3) "Executive Director" means the Executive Director of GOED.

(4) "GOED" means The Governor's Office of Economic Development.

(5) "Retail Business", as used in Subsection 63N-2-103(6)(b), means the physical location from which the general public may directly purchase merchandise or direct services and does not include distribution centers, the corporate functions associated with retailing, or other activities associated with retailing that may be accomplished from any physical location or that are not dependent on proximity to end consumers for retail sales.

R357-3-103. Authority.

This rule is adopted by the office under the authority of Subsection 63N-2-104(2).

R357-3-104. Application Content.

(1) In order to determine a company's eligibility for an Economic Development Tax Increment Financing Incentive the company may be required to supply additional information to GOED, which may include:

(a) balance sheets;
(b) income statements;
(c) cash flow statements;
(d) tax filings;
(e) market analyses;
(f) competing states' incentive offers;
(g) corporate structure;
(h) workforce data;
(i) forecasted new state revenue associated with the new commercial project;
(j) forecasted incremental job creation associated with the new commercial project;
(k) forecasted wages associated with the new commercial project;
(l) other information as determined by GOED.

(2) If a company fails to provide any requested information GOED may deny the application.

(3) Information provided by the business entity is subject to the Government Records Access and Management Act. The business entity has the option, at its sole discretion and responsibility, to designate what information provided is private or protected subject to Section 63G-2-302 and/or Section 63G-2-305.

R357-3-105. Factors to Be Considered in Authorizing an Economic Development Tax Credit Award.

(1) The amount and duration of a tax credit award shall be determined on a case-by-case basis. The factors that will be considered include but are not limited to:

(a) forecasted new state revenue associated with the new commercial project;
(b) forecasted new incremental jobs associated with the new commercial project;
(c) forecasted wages associated with the new commercial project;
(d) the demonstrated support of the local community for the project;
(e) the competitive nature of the project, to what extent other states have available incentives for the new commercial project, and the competitiveness of the other incentives;
(f) whether the company is projecting positive long term growth;
(g) the overall benefit to the State from the new commercial project;
(h) the uniqueness of the economic opportunity;
(i) how the tax credit would mitigate the loss or potential loss of new state and local revenues in the State, high paying jobs, new economic growth, or that address the factors set forth in UCA 63N-2-102 and 104.
(j) whether the company's industry has been determined by the GOED Board as a Target Industry, as defined in Subsection 63N-3-102 (9);
(k) the economic environment, including the unemployment rate and the underemployment rate, at the time of the new commercial project or company applies;
(l) the location of the new commercial project;
(m) comparison to previously incented projects in size, scope, and industry; and
(n) other factors as reasonably determined by the Administrator.

R357-3-106. Economic Development Tax Credit Process.

(1) All annual tax credits shall be based on actual incremental taxes paid by the business entity or withheld on behalf of employees of a new commercial project.

(2) GOED shall propose a tax credit structure based on the factors set forth in this rule in a combination GOED deems the most effective and beneficial in weighing the benefits of the State, local community, and company.

(a) GOED shall propose the tax credit terms and structure to the Board prior to making a final offer to the business entity.

(3) If the Executive Director approves an Economic Development Tax Credit, GOED shall provide a tax credit offer letter to a business entity that includes:

(a) the proposed terms of the Economic Development Tax Credit, including the maximum amount of aggregate annual tax credits and the time period over which the Tax Credits may be claimed;
(b) a statement that the company must demonstrate sufficient growth and supply; and
(c) documentation that will be required each incentive year in order to claim a tax credit for the following tax year.

(4) If the applicant intends to accept the incentive offer, it shall counter-execute the tax credit offer letter.

(5) If the Executive Director denies an application for an Economic Development Tax Credit, GOED shall provide a letter to the business entity that includes:

(a) notice of the application denial;
(b) reason for denial; and
(c) notice that the business entity can reapply for a tax credit if changes to the proposed new commercial project are made.

(6) GOED will establish a baseline with the company that consists of the count of full-time employees and state revenue reflective of presence in the state prior to board approval date. Basline must be established prior to awarding a tax credit.

(7) A company with an active contract, who desires a tax credit, must provide an annual report for the incentive year in the format and method as directed by GOED, with a level of accuracy comparable with information GOED obtains from the

Department of Workforces Services and the Tax Commission, that at a minimum must contain:

(a) a list of all individuals in Utah that received compensation at the company and/or project with their position, start date, termination date, hours paid, wages paid, benefits paid and employer withholding taxes paid or an aggregate list that provides qualification and legislative reporting required for 63N-2-106, as determined GOED.

(b) the requested amount of tax revenue to be rebated from withholding, sales and use, vendor paid sales tax and income tax verified as paid, remitted and receipted to the state.

R357-3-107. Modification of the Tax Credit Offer or Contract.

(1) GOED may modify, or a business entity may request to modify, the terms of a tax credit offer or contract as set forth below:

(a) Substantive Modifications: under extraordinary circumstances, a business entity may request to modify the terms of the tax credit agreement if:

(i) there is a substantial change to new commercial project plan; and

(ii) modifying the terms of the tax credit would benefit the State.

(b) Nonsubstantive Modifications: GOED and the business entity may make nonsubstantive modifications to the tax credit contract to:

(i) correct clerical errors made in the initial application, the offer, the contract, or the tax credit;

(ii) make technical changes that do not alter the tax incentive amount or violate any state or federal law; or

(iii) adjust the timeline of no more than 24 months.

(2) Substantive modifications require Board consultation prior to the Executive Director's approval or denial.

(3) All requests and modifications shall be documented and maintained by the GOED.

KEY: economic development, jobs, tax credit
December 24, 2018 63N-2-104

R357. Governor's Office of Economic Development.
R357-14. Electronic Meetings.
R357-14-101. Purpose and Procedure.

In accordance with Section 52-4-207, the following shall apply to electronic meetings held by any "public body", as defined in Subsection 52-4-103 (9), within Title 63N, Governor's Office of Economic Development and Title 63C, Chapter 10, Part 1, Governor's Rural Partnership Board.

(1)(a) An agency director or designee, on his/her own initiative, may establish an electronic meeting.

(b) Any member of a public body may also request an agency director or designee to establish an electronic meeting.

(i) Any such request shall be made not less than three business days prior to a meeting. The agency director or designee may shorten this time frame upon a determination of reasonable need.

(ii) The agency director or designee may determine whether such a request should be granted based on budget, public policy, or logistical considerations.

(2) A quorum of the public body is not required to be present at a single anchor location for an electronic meeting.

KEY: electronic meetings, open and public meetings
December 17, 2018 52-4-207

R357. Governor, Economic Development.
R357-15. Enterprise Zone Tax Credit.
R357-15-1. Authority.

(1) Subsection 63N-2-213(6) requires the office to make rules establishing the form and content of an application for an Enterprise Zone tax credit, the documentation required to receive an Enterprise Zone tax credit, and the administration of the program, including relevant timelines and deadlines.

R357-15-2. Definitions.

(1) The definitions below are in addition to or serve to clarify the definitions found in Utah Code Section 63N-2-201 Utah Code Section 59-7-614.10, Section 59-10-1036, and Section 63N-2-202.

(2) "Baseline" means: The highest total number of employees employed by the applicant for the previous three years. This number will be the baseline to determine all new incremental full-time employee positions

(3) "Qualifying investment in plant, equipment, or other depreciable property" means an investment in most types of tangible property (except land), such as buildings, machinery, vehicles, furniture, and equipment that qualifies for depreciation under the Internal Revenue Service's Form 4562 in the amount of acquisition cost less trade-in allowance.

(4) "Software purchases" means tangible physical property, cloud services, or software as a service.

(5) "Qualified business use vehicle" means vehicles registered in the name of the business entity and used more than 50% of the time for the business entity.

(6) "Payment documentation" means a bank statement, cleared check, loan, or financing agreement which identifies the business entity, date and amount paid.

(7) "Purchase documentation" means bill of sale, contract of sale, receipt, invoice, or property tax notice which identifies the business entity and date issued.

(8) "Value-added business entity" means a company that creates a change in the physical state or form of a product in a manner that enhances its value, thus expanding the customer base of the product. Examples include milling wheat into flour or making strawberries into jam.

R357-15-3. Application Form and Content.

(1) An application form will be provided by the Office and will contain the following content:

(a) General submission instructions;

(b) Types of tax credits available to be claimed;

(c) Criteria for qualification for each tax credit;

(d) Any required deadlines and relevant timelines; and

(e) All required documents and information necessary for verification and approval of the application.

(2) The application shall be created in an electronic format available to the public at business.utah.gov

(3) The application shall also be available in paper format for any person or entity that requests a paper copy via mail or telephone.

R357-15-4. Required Documentation and Verification Information.

(1) To claim any of the tax credits available under 63N-2-201 et. seq. the following basic information must be provided to the Office.

(a) Business or Individual's name that is claiming a tax credit on a Utah Tax filing submission;

(b) A contact name, email, phone number, mailing address and relevant title(s);

(c) The physical address where the business or individual is located including a screenshot of the address pinpoint within the Enterprise Zone as found on locate.utah.gov.

i. A tax credit shall not be issued if the only connection to an enterprise zone is a P.O. Box;

(d) The business or individual's tax identification number whether a federally provided Employer Identification Number (EIN) or a Social Security Number (SSN); and

(e) Additional information as required in the Application.

(2) To qualify for any of the Employment tax credits pursuant to Subsections 63N-2-213(7)(a)-(d) the following documentation and information is required:

(a) A current total of all full time employees including the total of employees as reported to the Department of Workforce Services for the last three years.

(b) The number of New Incremental Employee Positions created above the baseline.

i. For each New Incremental Employee Position above the baseline the applicant must provide:

1. Employee Name;

2. Employee Hourly Wage and/or Annual Salary;

3. Employee Average Hours worked per week;

4. Employee Hire date;

5. If applicable, proof of employer-sponsored health insurance program if the employer pays at least 50% of the premium cost;

6. If applicable, evidence that the business entity adds value to agricultural commodities through manufacturing or processing.

a. List of sample products or processes.

7. Other documentation requested by the Office on the tax credit application.

(3) To qualify for the private capital investment tax credit under Subsections 63N-2-213(7)(e) and (f) the following documentation and information is required:

(a) If the private capital investment is for the rehabilitation of a building in an Enterprise Zone the applicant must provide:

i. The rehabilitated building's physical address

ii. Documents showing the current owner such as the deed or mortgage documents;

iii. The date the building was last occupied;

iv. A current occupancy permit or certificate;

v. Receipts and paid invoices of all rehabilitation expenses totaling the amount the tax credit is calculated from; and

1. The Office may request further documentation to verify receipts and paid invoices including accompanying bank statements.

vi. Any other documentation requested by the Office including a sworn affidavit confirming the rehabilitation costs from the owner of the building if applicant is not the owner of the building.

(b) If the private capital investment is a qualifying investment in plant, equipment, or other depreciable property in an Enterprise Zone the applicant must provide:

i. receipts and/or loan documentation showing the entire purchase price and amount paid by the applicant;

ii. an itemized list of qualified investments being claimed for the credit on a template provided by the office;

iii. purchase documentation and one or more forms of payment documentation validating item is paid in entirety for each item equal or greater than an amount established by the office;

iv. property and real estate transactions also require the contract of sale, settlement statement, property tax notice, and financing agreement; and

v. qualified business use vehicle purchases shall also include Utah Bill of Sale TC-843, business percentage use and financing agreement or payment documentation.

R357-15-5. Application Review and Authorization Process for an Enterprise Zone Tax Credit.

(1) The Office shall review all submitted applications within a reasonable amount of time and approve or deny the

application

(a) The Office shall review all tax credits claimed and documentation provided.

(b) The Office may request additional documentation or information if the Office determines that further verification is required.

i. Failure to comply with a request for additional documentation may result in a denial of the application.

(2) The Office will issue tax credit certificates for all tax credits for which an applicant has applied, qualified and been approved by the Office.

(a) This Office may issue a partial approval if only parts of the application are determined to qualify.

(3) The Office must provide written notice that includes its reasoning when denying any or a portion of a tax credit application.

(4) If approved in whole or in part, the Office shall provide any necessary documents and instructions, approved by the Utah Tax Commission, for claiming the tax credit.

(5) When a business entity is seeking to receive a tax credit for the purchase of a vehicle, in conformity with Subsection 63N-2-213(7)(f), the office shall not grant a tax credit for the trade-in value of a vehicle that the business entity traded into the purchase of the vehicle for which the tax credit is being sought.

(6) The Office may deny Qualified Investments being claimed as software purchases that are cloud services or software as a service.

(7) The Office may deny claims for applications with Qualified Investments purchased more than three calendar years ago.

(8) The Office may deny claims for Qualified Investments purchased from another entity with the same ownership.

R357-15-6. Appeal of Application Denial.

(1) A hearing contesting the denial of an application in whole or in part of an Enterprise Zone Tax Credit is designated as informal hearings.

KEY: enterprise zones, tax credits
December 24, 2018 63N-2-213(6)

R392. Health, Disease Control and Prevention, Environmental Services.
R392-101. Food Safety Manager Certification.
R392-101-1. Authority and Purpose of Rule.

This rule is authorized by Section 26-15a-103 for the purposes of establishing statewide uniform standards for certified food safety managers and implementing the Food Safety Manager Certification Act.

R392-101-2. Definitions.

(1) As used in Title 26, Chapter 15a, and in this rule:

(a) Commercially prepackaged means any food packaged in a regulated food processing plant that does not require temperature control and is stored and used in accordance with the manufacturer's label.

(b) Continental breakfast means a breakfast meal restricted to:

(i) Beverages such as coffee, tea, and fruit juices;

(ii) Pasteurized Grade A milk;

(iii) Fresh fruits;

(iv) Frozen and commercially processed and prepackaged fruits;

(v) Commercially prepackaged baked goods, such as pastries, rolls, breads and muffins that are non-potentially hazardous foods;

(vi) Cereals;

(vii) Commercially prepackaged jams, jellies, honey, and syrup;

(viii) Pasteurized Grade A creams and butters, non-dairy creamers, or similar products;

(ix) Commercially prepackaged hard cheeses, cream cheese and yogurt in unopened packages; and

(x) foods served with single-use articles.

(xi) Single-use article means a utensil designed and constructed to be used once and discarded.

(xii) Heat and serve foods are precooked by the manufacturer and do not require cooking to critical temperatures as required by R392-100, but only require heating to meet the customer's satisfaction.

R392-101-3. Certification and Recertification Examination Content.

Certification and recertification examinations shall require the examinee to demonstrate knowledge in food protection management in the following areas:

(1) Identify foodborne illness.

(a) Define terms associated with foodborne illness.

(i) foodborne illness

(ii) foodborne outbreak

(iii) foodborne infection

(iv) foodborne intoxication

(v) diseases communicated by food

(vi) foodborne pathogens

(b) Recognize the major organisms and toxins that can contaminate food and the problems that can be associated with the contamination.

(i) bacteria

(ii) viruses

(iii) parasites

(iv) fungi

(c) Define and recognize potentially hazardous foods.

(d) Define and recognize chemical and physical contamination and illnesses that can be associated with chemical and physical contamination.

(e) Define and recognize the major contributing factors for foodborne illness.

(f) Recognize how microorganisms cause foodborne disease.

(2) Identify time/temperature relationship with foodborne illness.

(a) Recognize the relationship between time/temperature and microorganisms survival, growth, and toxin production during the following stages:

(i) receiving

(ii) storing

(iii) thawing

(iv) cooking

(v) holding/displaying

(vi) serving

(vii) cooling

(ix) storing or post production

(x) reheating

(xi) transporting

(b) Describe the use of thermometers in monitoring food temperatures.

(i) types of thermometers

(ii) techniques and frequency

(iii) calibration and frequency

(3) Describe the relationship between personal hygiene and food safety.

(a) Recognize the association between hand contact and foodborne illness.

(i) hand washing technique and frequency

(ii) proper use of gloves, including replacement frequency

(iii) minimal hand contact with food

(b) Recognize the association of personal habits and behaviors and foodborne illness.

(i) smoking

(ii) eating and drinking

(iii) wearing clothing that may contaminate food

(iv) personal behaviors, including sneezing, coughing and scratching.

(c) Recognize the association of health of a foodhandler to foodborne disease

(i) free of symptoms of communicable disease

(ii) free of infections spread through food on contact

(iii) food protected from contact with open wounds

(d) Recognize how policies, procedures and management contribute to improved hygiene practices.

(4) Describe methods for preventing food contamination from purchasing to serving.

(a) Define terms associated with contamination:

(i) contamination

(ii) adulteration

(iii) damage

(iv) approved source

(v) sound and safe condition

(b) Identify potential hazards prior to delivery and during delivery.

(i) approved source

(ii) sound and safe condition

(c) Identify potential hazards and methods to minimize or eliminate hazards after delivery:

(i) personal hygiene

(ii) cross contamination from food to food

(iii) cross contamination between equipment and utensils

(iv) contamination from chemicals

(v) contamination from additives

(vi) physical contamination

(vii) contamination during service and display

(viii) contamination from customers

(ix) storage

(x) re-service

(5) Identify correct procedures for cleaning and sanitizing equipment and utensils:

(a) Define terms associated with cleaning and sanitizing.

(i) cleaning

(ii) sanitizing

(b) Apply principles of cleaning and sanitizing
(c) Identify materials: equipment, detergent and sanitizer
(d) Identify appropriate methods of cleaning and sanitizing.
(i) manual dishwashing
(ii) mechanical dishwashing
(iii) clean-in-place
(e) Identify frequency of cleaning and sanitizing
(6) Recognize problems and potential solutions associated with facility, equipment and layout.
(a) Identify facility, design and construction suitable for food establishments:
(i) refrigeration
(ii) heating and hot-holding
(iii) floors, walls and ceilings
(iv) pest control
(v) lighting
(vi) plumbing
(vii) ventilation
(viii) water supply
(ix) wastewater disposal
(x) waste disposal
(b) Identify equipment and utensil design and location
(7) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance:
(a) by self inspection program.
(b) by pest control program.
(c) by cleaning schedules and procedures.
(d) by equipment and facility maintenance program.

R392-101-4. Food Safety Manager Certification Courses.
(1) For the purposes of Section 26-15a-104(2)(b), a course approved by the Department shall be designed for a specific approved examination in R392-101-5(4) as determined by that examination's developer.
(2) The course developer shall certify the instructor.
(3) The Department shall approve the course for 3 years.

R392-101-5. Test Approval.
(1) A person seeking approval of an examination shall provide the following background information to the Department:
(a) The person's name, address, telephone number and contact person.
(b) A description of the usage of the examination including the time period in use, number of examinations already administered, and any government or other agencies already approving the examination.
(c) A copy of the examination's pool of questions. Each question shall be:
(i) Cross-referenced to the corresponding content area in R392-101-3, and
(ii) Documented with the correct answer and the source from which the correct answer was determined.
(d) A sample copy of the official certificate issued to persons who pass the examination.
(2) An examination must meet the following requirements in order to be approved:
(a) It must contain at least 50 multiple choice questions, drawn from a pool of at least three times the number of questions given in the examination.
(b) All questions shall be multiple choice with 4 choices.
(c) At least 85% of the questions must be in the content categories of R392-101-3 and shall be apportioned to them as follows:
(i) Identify foodborne illness shall constitute 6-20% percent of the total examination questions,
(ii) Identify time/temperature relationship with foodborne illness shall constitute 6-20% percent of the total examination questions,
(iii) Describe the relationship between personal hygiene and food safety shall constitute 6-20% percent of the total examination questions,
(iv) Describe methods for preventing food contamination from purchasing to serving shall constitute 6-20% percent of the total examination questions,
(v) Identify correct procedures for cleaning and sanitizing equipment and utensils shall constitute 6-20% percent of the total examination questions,
(vi) Recognize problems and potential solutions associated with facility, equipment and layout shall constitute 6-20% percent of the total examination questions,
(vii) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance shall constitute 6-20% percent of the total examination questions.
(d) The person seeking approval shall demonstrate that the same version of the examination will not be used more than 6 months and that at least 10% of the questions will be randomly selected and changed between versions.
(e) The person seeking approval shall demonstrate that a system for updating the pool of questions at least every three years is in place.
(f) The examination questions must be grammatically correct and contain no misspellings.
(g) The distractors must be relevant to the examination question and represent a plausible alternative.
(3) The Department shall review the materials submitted by an applicant in R392-101-5(1) and (2). The Department shall approve examinations that meet the requirements. If an examination is approved the Department shall notify the examination developer of the approval in writing. If the Department does not approve an examination, it shall notify the examination developer in writing of the reasons why.
(4) The Department shall maintain a current list of approved examinations.
(5) A person may not represent an examination as Department of Health approved, or other similar language, if the examination is not listed according to R392-101-5(4).

R392-101-6. Test Administration.
(1) Test administrators shall:
(a) Provide monitors and security at the locations where the examination is administered.
(b) Maintain a tracking system for all examinations to protect them against theft.
(c) Provide locations and dates of all examinations administered by the testing organization upon request of the Department.
(d) Provide necessary staff to administer, monitor and grade examinations.
(e) Maintain records of each candidate's name, home address, social security number, pass/fail status, date of examination, and name of instructor for at least three years.
(f) Provide accommodation for examinees who do not speak English and who wish to take the test.
(2) The test administrator shall assure there is at least one monitor for every 40 students taking the examination.
(3) The monitor shall confirm the identity of the individual who wishes to take the examination by photographic identification, driver's license or student identification card. The individual shall provide a legal document bearing his signature to the monitor if he does not have a photographic identification card.
(4) The test administrator shall provide test security measures which protect the test from compromise in preparation, printing and transportation to the site, as follows:

(a) The examination materials are stored and administered under secure conditions, where access to the examination is limited to the monitor and test administrator.

(b) The examination materials are inventoried prior to and immediately following each administration of the examination.

(c) The examination materials are available to the candidate during the examination administration only.

(5) The test administrator may not certify an individual determined to have cheated on the examination.

(6) The test administrator may not administer an examination which has been compromised.

R392-101-7. Certification and Recertification Requirements.

(1) A person must answer at least 70% of the questions correctly on a Department- approved examination to pass the examination; except that the examination developer may set the passing score for an examination that it demonstrates to have been developed in accordance with the Standards For Educational And Psychological Testing published by the American Psychological Association.

(a) The examination developer must submit documentation to the Department supporting its claim.

(b) The Department shall review the documentation and determine the validity of the claim.

(2) A person who successfully passes a Department-approved examination must provide documentation of that to the local health officer within sixty days of receipt of the documentation to be certified as a food safety manager. A photocopy of the documentation is acceptable. If a certified food safety manager commences work in a different local health jurisdiction he shall notify the local health officer in that jurisdiction.

(3) A person who completes the requirement in R392-101-7(2) shall be considered to be certified as a food safety manager throughout Utah.

(4) Food safety manager certifications are effective for three years from the date the applicant receives documentation of a passing score from the testing organization.

(5) A food service establishment must maintain a copy of its certified food safety manager's documentation of a passing score on a Department-approved examination on file at the establishment. The food service establishment's person in charge must provide this documentation to the local health officer or his designated representative upon request.

(6) To recertify, a certified food safety manager must submit documentation to the appropriate local health department indicating a passing score on a Department-approved examination within the previous six months.

(7) A person certified as a food safety manager is exempt from state or local requirements for food handlers as defined in Section 26-15-1(1) Utah Code.

R392-101-8. Exempt Establishments.

A local health officer shall exempt a food service establishment from having a Certified Food Safety Manager on staff, if after evaluation by the local health department, the food service establishment:

(1) is classified within the lowest risk category for a local health department utilizing a risk-based assessment system; or

(2) serves a menu of commercially prepackaged, or heat and serve foods, or foods that require limited handling or assembly and does not conduct any of the following food preparation processes as defined in the Food Code, R392-100:

(a) cook foods that are required to reach critical temperatures as required by R392-100;

(b) use foods that are required to be cooled within a 6 hour time period as required by R392-100; or

(c) use foods that must be reheated to 165 degrees as required by R392-100.

R392-101-9. Penalties.

Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: public health, food service
March 15, 2010 26-15a-103
Notice of Continuation December 12, 2018

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-2. Newborn Hearing Screening: Early Hearing Detection and Intervention (EHDI) Program.
R398-2-1. Authority and Purpose.

(1) Authority for the Newborn Hearing Screening: Early Hearing Detection and Intervention program and promulgation of rules to implement the program are found in Section 26-10-6.

(2) The purpose of this rule is to facilitate early detection, prompt referral, and early intervention of infants who are deaf or hard of hearing.

R398-2-2. Definitions.

(1) "Audiologist" means a person who is licensed by the state where services are provided and has expertise in infant and pediatric audiology.

(2) "Auditory brainstem response" means an objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear.

(3) "Automated auditory brainstem response" means objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear, obtained with equipment which automatically provides a pass/refer outcome.

(4) "Deaf or Hard of Hearing" means a dysfunction of the auditory system of any type or degree that is sufficient to interfere with the acquisition and development of speech and language skills.

(5) "Department" means the Utah Department of Health, Newborn Hearing Screening: Early Hearing Detection and Intervention (EHDI) program.

(6) "Diagnostic procedures" means audiometric and medical procedures required to diagnose an infant as deaf or hard of hearing.

(7) "Early intervention" means auditory habilitation and/or enrollment into a formal early intervention program.

(8) "Evoked otoacoustic emissions" means an objective test method which elicits a physiologic response from the cochlea, and may include Transient Evoked Otoacoustic Emissions and Distortion Products Otoacoustic Emissions test procedures.

(9) "Follow-up" means appropriate services and procedures relating to the confirmation of hearing status and appropriate referrals for infants with abnormal or inconclusive screening or diagnostic results.

(10) "Institution" means a facility licensed by the State of Utah for birthing babies.

(11) "Lost to follow-up" means infants who cannot be identified through tracking, and who have not completed the screening, diagnostic or early intervention referral processes.

(12) "Newborn Hearing Screening" means the completion of an objective, physiological test or battery of tests administered to determine the infant's hearing status and the need for further diagnostic testing by an audiologist with expertise in infant and pediatric audiology or physician with the Department approved instrumentation, protocols and pass/refer criteria.

(13) "Parent" means a natural biological parent, a step-parent, adoptive parent, legal guardian, or other legal custodian of a child.

(14) "Primary care provider" means the infant's primary medical caregiver.

(15) "Referral" means to direct an infant to an audiologist or physician for appropriate diagnostic procedures to diagnose and determine hearing status and for appropriate early intervention.

(16) "Tracking" means the use of information about the infant's newborn hearing screening status to ensure the infant receives timely and appropriate services to complete the screening, diagnostic and early intervention referral processes.

R398-2-3. Implementation.

Each newborn in the state of Utah shall submit to the Newborn Hearing Screening testing, except as provided in Section 26-10-6(1).

R398-2-4. Responsibility for Screening.

(1) Each institution shall designate a person to be responsible for the newborn hearing screening program in that institution.

(2) An audiologist who is licensed by the State of Utah shall oversee each newborn hearing screening program. This audiologist may be full or part time, on or off site, an employee of the institution, or under contract or other arrangement that allows him/her to oversee the newborn hearing screening program. This audiologist shall advise the institution about all aspects of the newborn hearing screening program, including screening, tracking, follow-up, and referral for diagnosis.

(3) The institution must provide newborn hearing screening services as required by this rule prior to discharge, unless the infant is transferred to another institution before screening is completed.

(4) If the infant is transferred to another institution before screening is completed, the receiving institution must provide hearing screening services as required by this rule prior to discharge.

(5) If the infant is born outside of an institution, the person in attendance at the birth must perform or arrange for the infant's hearing screening before 14 days of age as required by this rule.

(6) If there is no person in attendance at the birth, a parent must have the infant's hearing screened, according to Department protocols, before the infant is 14 days of age.

(7) Newborn hearing screening shall be performed by a person who is appropriately trained and supervised, according to protocols as established by the Department with input from Newborn Hearing Screening Committee.

R398-2-5. Information to Parents and Primary Care Providers.

(1) Institutions or persons primarily responsible for births shall provide information about newborn hearing screening to parents and primary care providers of infants. This shall include:

(a) information, which shall be available to parents at the time of birth, about the purpose of newborn hearing screening, the procedures used for screening, the benefits of newborn hearing screening;

(b) whether each live birth was screened prior to discharge from the institution;

(c) the results of the completed newborn hearing screening procedure;

(d) what follow-up screening procedures, if any, are recommended and where those procedures can be obtained; and

(e) cytomegalovirus testing when appropriate.

(2) For infants who require additional procedures to complete the screening after being discharged from the birthing institution, the institution shall provide parents and the primary care providers with written notice about the availability and importance of the additional screening procedures. For infants who do not complete additional hearing screening procedures, the institution shall send a second written notice to the parents and the primary care provider.

(3) For infants who do not pass the complete newborn hearing screening procedure, the institution or the provider who completes the newborn hearing screening procedure shall provide the parents and the primary care provider with written notice about the results of the screening, recommended diagnostic procedures, where those procedures can be obtained, and resources available for infants and toddlers who are deaf or

hard of hearing.

(4) For infants who need additional procedures to complete the screening due to a missed test, inconclusive results, or a failure to pass, and who do not return for the needed newborn hearing screening procedures before 14 days of age, or for infants who are "lost to follow-up," the institution or the person in attendance at birth shall make reasonable efforts to locate the parents and inform them of the need for testing. To be considered a reasonable effort, the institution must have documentation of at least two attempts to contact the infant's parents by mail or phone, and at least one attempt to contact the infant's primary care provider. If necessary, the institution must use information available from its own records, adoption agencies, and the infant's primary care provider. Contact with the parent may be made by mail, email, telephone, text, primary care provider, or public health worker.

R398-2-6. Reporting to Utah Department of Health.

(1) All institutions or persons in attendance at births shall submit information to the Department about the newborn hearing screening procedures being used, the results of the screening, and other information necessary to ensure timely referral where necessary. This information shall be provided to the Department at least weekly. This information shall include:

(a) for each live birth, identifying information for the infant (last name, date of birth, Newborn screening kit number, birth mother's first and last name and/or other information as determined by the Department) and the hearing screening status, e.g., passed, referred, inconclusive, refused, missed, transferred, deceased;

(b) for infants who did not pass the newborn hearing screening or who were not screened, this additional information is required: primary contact's first and last name, address, telephone number, and primary care provider's first and last name, and/or other information as determined by the Department;

(c) any information the institution or practitioner has about the results of follow-up screening, diagnostic procedures, and cytomegalovirus lab results; including whether the infant has been "lost to follow-up."

(2) All institutions or persons in attendance at births shall submit information to the Department a summary of the procedures used by the institution or screening program to do newborn hearing screening, including the name of the program director, equipment, screening protocols, referral criteria, and parent education materials and other information as determined by the Department. This information shall be provided to the Department bi-annually and within 30 days of any changes to the existing procedures.

(3) Persons who conduct any procedure necessary to complete an infant's hearing screening or audiological diagnostic assessment as a result of a referral from an institution, birth attendant, audiologist or primary care provider, shall report the results of these procedures to the institution where the infant was born and to the Department within 7 days.

(4) The Department shall have access to infants' medical, diagnostic, and early intervention records to obtain information necessary to ensure the provision of timely and appropriate follow-up diagnostic and intervention services.

R398-2-7. Confidentiality of Reported Information.

(1) All information reported to the Department under this rule is confidential and not open to public inspection. The confidentiality of personal information obtained under this rule shall be maintained according to the provisions of Utah Code, Title 26, Chapter 3.

(2) Persons who report information covered by this rule, either voluntarily or as required by rule, may not be held liable for reporting the information to the Department, as provided in Title 26, Chapter 25.

R398-2-8. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty as provided in Section 26-23-6.

KEY: newborn hearing screening
December 3, 2018 26-10-6
Notice of Continuation June 19, 2018

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-4. Cytomegalovirus Public Health Initiative.
R398-4-1. Definitions.

(1) "UDOH" and "Department" means the Utah Department of Health.

(2) "Hearing screening" means the completion of an objective, physiological test or battery of tests administered to determine the infant's hearing status and the need for further diagnostic testing by an audiologist or physician using the Department approved instrumentation, protocols and pass/refer criteria.

(3) "Medical practitioner" means the newborn infant's primary medical caregiver.

(4) "Parent" means a natural biological parent, a step-parent, adoptive parent, legal guardian, or other legal custodian of a child.

R398-4-2. Purpose and Authority.

(1) The purpose of this rule is to clarify when a newborn infant hearing screening requires testing for CMV, medical practitioner reporting requirements and under what circumstances a newborn infant may not fall under the CMV testing requirements.

(2) This rule is authorized by Section 26-10-10(5) which provides that the Department may make rules to administer the provisions of this section.

R398-4-3. Clarification of When a Newborn Must Be Referred for CMS Testing.

(1) The newborn must be referred for CMV testing if the infant fails both the initial hearing screen routinely done at birth and the subsequent follow-up screen.

(2) The newborn must be referred for CMV testing when the initial failed screen is obtained after 14 days of age.

R398-4-4. Special Populations of Newborns.

(1) In special populations of newborns where newborn hearing screening(s) cannot be accomplished prior to 21 days of age, testing for CMV is left to the discretion of the medical practitioner(s) caring for the newborn.

(2) Special populations of newborns may include, but are not limited to, premature or medically fragile newborns or newborns receiving on-going medical care.

R398-4-5. Reporting Requirements.

Medical practitioners are required to submit results of the CMV testing to UDOH for each newborn under their care who is referred for CMV testing within 10 days of receiving results.

KEY: cytomegalovirus, CMV, newborn hearing screening
January 17, 2014 26-10-10
Notice of Continuation December 6, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System) for nursing facilities that are not ICF/MRs. This system reimburses facilities based on the case mix index of the facility. It also establishes rates for ICF/MR facilities.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-3, and 26-35a.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the fair rental value (FRV) established by this rule.

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13)(a) "Urban provider" means a facility located in a county which has a population greater than 90,000 persons.

(b) "Rural provider" means a facility that is not an urban provider.

(14) "FRV Data Report" means a report that provides the Department with information relating to capital improvements to be included in the FRV calculation.

(15) "Banked beds" means beds that have been taken off-line by the provider, through the process defined by Utah Department of Health, Bureau of Facility Licensing, Certification, and Resident Assessment, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity.

(16) "Bed Addition" means, as used in the fair rental value calculation, a capitalized project that adds additional beds to the facility. This must be new and complete construction. An increase in total licensed beds and new construction costs support a claim of additional beds.

(17) "Bed Replacement" means, as used in the fair rental value calculation, a capitalized project that furnishes a bed in the place of another, previously existing, bed. Room remodeling is not a replacement of beds. This must be new and complete construction.

(18) "Major Renovation" means, as used in the fair rental value calculation, a capitalized project with a cost equal to or greater than $500 per licensed bed. A renovation extends the life, increases the productivity, or significantly improves the safety (such as by asbestos removal) of a facility as opposed to repairs and maintenance which either restore the facility to, or maintain it at, it's normal or expected service life. Vehicle costs are not a major renovation capital expenditure.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in Rule R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patient add-on amounts.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by Section R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data.

The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4)(a) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation.

(b) The state average case mix index excludes the following:

(i) A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report; or

(ii) A facility having less than six (6) months of data reported under Rule R414-401.

(c) The state average case mix index is used to set the rate for the following facilities:

(i) A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report; or

(ii) A facility having less than six (6) months of data reported under Rule R414-401.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. Utah's Bureau of Health Facility Licensure, Certification and Resident Assessment will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(7) Reimbursement for nursing home rates is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(8) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) specific steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(9) A provider may challenge the rate set pursuant to this rule using the appeal in Rule R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(10) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

(11) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(12) Withholding of Title XIX payments

(a) Unless specified otherwise, the Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within 10 business days to a written request for information.

(13) The Department shall provide written notice before withholding payments.

(14) When the Department rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

(a) For ongoing operations, the Department will provide notice before withholding payments. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection (a)(iv). The repayment schedule may not exceed 180 days.

(b) When the Department rescinds withholding of

payments to a facility, it will resume payments according to the regular claims payment cycle.

R414-504-4. Quality Improvement Incentive.

(1) Reimbursement for Nursing Home Quality Improvement Incentives is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(2) Division staff are not required to request additional information relating to any application submission.

(3) Providers shall ensure all necessary information is included in the application in order to qualify.

(4) For applications received and reviewed by division staff prior to the annual submision deadline, if the application is incorrect or lacks sufficient supporting documentation, then the application shall be denied. If it is received prior to the annual submission deadline, the provider may submit a subsequent application that includes all needed supporting documentation for consideration.

(5) For applications received prior to the annual submission deadline and reviewed by division staff after the annual submission deadline, then the provider's application may be considered for qualification of a reduced amount, where possible, based on the submitted documentation.

(6) In all cases, no additional applications, documentation or explanation will be accepted if submitted after the annual submission deadline.

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Section 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MRs based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to Section R414-504-3.

(2)(a) Reimbursement for the ICF/MR Quality Improvement Incentive is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(b) Division staff are not required to request additional information relating to any application submission.

(c) Providers shall ensure all necessary information is included in the application in order to qualify.

(d) For applications received and reviewed by division staff prior to the annual submission deadline, if the application is incorrect or lacks sufficient supporting documentation, then the application shall be denied. If it is received prior to the annual submission deadline, the provider may submit a subsequent application that includes all needed supporting documentation for consideration.

(e) For applications received prior to the annual submission deadline and reviewed by division staff after the annual submission deadline, then the provider's application may be considered for qualification of a reduced amount, where possible, based on the submitted documentation.

(f) In all cases, no additional applications, documentation or explanation will be accepted if submitted after the annual submission deadline.

KEY: Medicaid
January 1, 2019 26-1-5
Notice of Continuation October 17, 2017 26-35a

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 applies only to nursing facility 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 Section R414-516-6;

(b) In Calendar Year 2019, 12 or more QI points with a minimum of six QI points from Section R414-516-6;

(c) In Calendar Year 2020 and beyond, 14 or more QI points with a minimum of seven from Section 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 Section R414-516-6.

(3) When calculating compliance under Section 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.

(5) The Division does not require a provider that enters the NF NSGO UPL program for only part of a calendar year to comply with the QI provisions of Section R414-516-3 in the first program calendar year.

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
December 6, 2018 **26-1-5**
26-18-3

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-3. Licensure.
R426-3-100. Authority and Purpose.

(1) This Rule establishes standards for the licensure of ground ambulance and paramedic services.

(2) The purpose of this rule is to set forth ground ambulance policies, rules, and standards adopted by the Utah Emergency Medical Services Committee, which promotes and protects the health and safety of the people of this state.

R426-3-200. Requirement for Licensure.

(1) A person who provides or represents that it provides ground ambulance, paramedic ground ambulance, or paramedic services shall first be licensed by the Department.

R426-3-300. Licensure Types.

(1) The Department may issue exclusive ground ambulance transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(2) The Department may issue exclusive ground ambulance inter-facility transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(3) The Department may issue exclusive paramedic, non-transport licenses.

(4) The Department may issue a paramedic tactical license that is a function not tied to a specific geographical location.

R426-3-400. Scope of Operations.

(1) A ground ambulance or paramedic licensed provider may only provide service to its specific licensed geographic service area and is responsible to provide all services to its entire specific geographic service area except as provided by aid agreements. It will provide emergency medical services for its category of licensure.

(2) A ground ambulance provider or paramedic service provider shall provide services 24 hours a day, every day of the year.

(3) A ground ambulance provider or paramedic service provider shall provide all standby services for any special event that requires ground ambulance or paramedic services within its geographic service area. The licensed provider may arrange for those services through aid agreements. Designated quick response units may also support licensed ground ambulance or paramedic services at special events. If a licensed provider refuses to provide service, or is non-responsive in a timely manner to a request for a special event, the event organizer may use a licensed or designated provider of their choice.

R426-3-500. Minimum Licensure Requirements Ground Ambulance and Paramedic Services.

A licensed provider shall meet the following minimum requirements:

(1) sufficient ground ambulances, emergency response vehicle(s), equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license or proposed license without relying upon aid agreements with other licensed provider;

(2) locations or staging areas for stationing its vehicles;

(3) a current written dispatch agreement with a designated emergency medical dispatch center;

(4) ground ambulances may have current written aid agreements with other ground ambulance licensed providers to give assistance in times of unusual demand;

(5) a Department certified EMS training officer that is responsible for continuing education;

(6) a current plan of operations;

(7) a description of how the licensed provider or applicant proposes to interface with other licensed and designated EMS providers;

(8) demonstrate fiscal viability;

(9) medical personnel roster which includes level of licensure to ensure there is sufficient trained and licensed staff for operational procedures;

(10) all proposed permitted vehicles;

(11) a current written agreement with a Department-certified off-line medical director or a medical director certified in the state where the service is based;

(12) provide a copy of its certificate of insurance or if seeking application, provide proof of the ability to obtain insurance to respond to damages due to operation of a vehicle in the manner and following minimum amounts:

(a) liability insurance in the amount of $1,000,000 for each individual claim; and

(b) liability insurance in the amount of $1,000,000 for property damage from any one occurrence;

(c) obtain the insurance from an insurance company authorized to write liability coverage in Utah or through a self-insurance program and shall:

(i) provide the Department with a copy of its certificate of insurance demonstrating compliance with this section; and

(ii) direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage within 60 days;

(13) not be disqualified for disciplinary action relating to an EMS license, permit, designation, or certification in this or any other state;

(14) a paramedic tactical service shall be a public safety agency or have a letter of recommendation from a county or city law enforcement agency within the paramedic tactical service's geographic service area;

(15) applicable fees and application on Department-approved forms to the Department;

(16) a detailed description and detailed map of the exclusive geographical areas that will be served;

(17) if the requested geographical service area is for less than all ground ambulance or paramedic services, the applicant shall include a written description and detailed map showing how the areas not included will receive ground ambulance or paramedic services;

(18) if an applicant is responding to a public bid, the applicant shall include detailed maps and descriptions for all geographical areas served;

(19) documentation showing that the applicant meets all local zoning and business licensing standards within the exclusive geographical service area that it will serve;

(20) a written description of how the applicant will communicate with dispatch centers, law enforcement agencies, on-line medical control, and patient transport destinations;

(21) patient care protocols, medications, and equipment approved by the provider's medical director based on licensure level according to Department policies;

(22) applicant's plans for operations during times of unusual demand;

(23) a written assessment of field performance from the applicant's off-line medical director;

(24) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(25) written cost, quality, and access goals as described in R426-3-600, if available;

(26) response to a request for proposal;

(27) if, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application;

(28) award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review;

(29) after review and before issuing a license to a new service, the Department will inspect the ground vehicle(s), equipment, and required documentation; and

(30) a license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-600. Cost, Quality, and Access Goals for Ground Ambulance Providers.

(1) A local government shall establish emergency medical service goals.

(2) Goals shall be renewed every four years in concurrence with the licensure process for the EMS licensed ground ambulance provider. All local governments in a licensed service area are required to participate.

(3) Goals may be amended, if necessary, due to:

(a) unforeseen changes in service delivery;

(b) community impacts; or

(c) significant unforeseen impact in the geographical service area.

(4) Goals shall be written, approved by local governments, and submitted to the Department with licensure and re-licensure application by the EMS licensed ground ambulance provider for the geographical service area.

(5) Local governments may choose to recognize EMS providers who have achieved accreditation by a Department approved accreditation organization as meeting the cost, quality, and access goals.

(6) Cost goals shall indicate the expected financial cost to the local government(s) and patients for the level of service provided.

(7) Quality goals shall indicate the expected level of service plus any additional foreseen improvements or advancements in service expectations.

(8) Access goals shall indicate the local government's expectation for access to the EMS system by any individual within the local government's geographic area.

R426-3-700. Medical Control.

(1) All licensed providers shall enter into a written agreement with a physician to serve as its off-line medical director to supervise the medical care or instructions provided by the field EMS personnel and dispatchers. The physician shall be familiar with:

(a) the design and operation of the local pre-hospital EMS system; and

(b) local dispatch and communication systems and procedures.

(2) The off-line medical director shall:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, and transport protocols;

(b) ensure the qualification of field EMS personnel involved in patient care through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel who does not comply with local medical triage, treatment and transport protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director shall notify the Department within one business day of the suspension;

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers; and

(g) licensed providers shall notify the Department if an off-line medical director is replaced, within thirty days.

R426-3-800. Ground Ambulance or Paramedic Service Provider Aid Agreements.

(1) All licensed ground ambulance providers are expected to render mutual aid support for adjoined geographical service areas. Mutual aid support means that they may be called upon to provide assistance during times of unusual demand. Exceptions for this expectation should be submitted as part of a license application.

(2) Other types of aid agreements shall be in writing, signed by both parties, and detail the:

(a) purpose of the agreement;

(b) type of assistance required;

(c) circumstances under which the assistance would be given; and

(d) duration of the agreement.

(3) The parties shall provide a copy of any aid agreement(s) except for mutual aid support to the Department and to the designated emergency medical dispatch center(s) that dispatch the licensed ground ambulance providers.

(4) When mutual aid support is given the licensed ground ambulance provider rendering support will be responsible for the following, unless otherwise stated in writing, and approved by the Department prior to the event:

(a) billing or other financial reimbursements;

(b) liability for EMS operations related to staff and patient care; and

(c) patient care protocols for licensure level.

R426-3-900. Application Review and Award for Ground Ambulance Providers Selected by Public Bid.

(1) Upon receipt of an appropriately completed application, for ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(2) If, upon Department review, the application is complete and meets all the requirements, the Department shall:

(a) for a new license application, issue a notice of approved application;

(b) issue a renewal license to an applicant;

(c) issue a four-year renewal license to a license selected by a political subdivision if the political subdivision verified to the Department that the licensed provider has met all of the specifications of the original bid and requirements; or

(d) issue a second four-year renewal license to a licensed provider selected by a political subdivision if:

(i) the political subdivision verified to the Department that the licensed provider has met all of the specifications of the original bid and requirements; and

(ii) if the Department or the political subdivision has not received, prior to the expiration date, written notice from an approved applicant desiring to submit a bid for ambulance or paramedic services.

(3) Upon the request of the political subdivision and the agreement of all interested parties and the Department that the public interest would be served, the renewal license may be issued for a period of less than four years or a new request for

the proposal process may be commenced at any time.

R426-3-1000. Criteria for Denial or Revocation of Licensure.

(1) The Department may deny an application for a license, a renewal of a license, or revoke, suspend or restrict a license without reviewing whether a license shall be granted or renewed to meet public convenience and necessity for any of the following reasons:

(a) failure to meet substantial requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, staffing, or insurance requirements;

(c) failure to meet agreements covering training standards or testing standards;

(d) substantial violations;

(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(f) a history of serious or substantial public complaints;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsification or misrepresentation of any information in the application or related documents;

(i) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required;

(k) a history of inappropriate billing practices;

(l) misuse of grant funds; or

(m) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant or licensed provider that has been denied, revoked, suspended or issued a restricted license may appeal by filing a written appeal within thirty calendar days of the receipt of the issuance of the Department's denial.

R426-3-1100. Change of Owner.

(1) A license and the vehicle permits cannot be transferred to another party.

(2) A new owner shall submit within 10 (ten) calendar days prior to acquisition of property, applications and fees for a new license and vehicle permits.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-4. Operations.
R426-4-100. Authority and Purpose.

(1) This rule is establishes standards for the operation of licensed ground EMS providers or designated EMS providers under the provisions of the Utah Emergency Medical Services System Act.

R426-4-200. Licensed Ground Ambulance and Designated QRU Staffing.

(1) While responding to a call, each permitted QRV shall be staffed by at least one individual licensed at or above the provider's designated level of service.

(2) While responding to a call, each licensed ground ambulance shall be staffed with the following minimum complement of licensed personnel for the service level described:

(a) Basic Life Support ambulance: two EMTs, AEMTs, or paramedics, or any combination thereof;

(b) AEMT ambulance: one AEMT and one EMT, AEMT, or paramedic;

(c) EMT-IA ambulance: one EMT-IA and one EMT, AEMT, or Paramedic;

(d) Paramedic ambulance: one paramedic and one EMT, AEMT, EMT-IA, or paramedic;

(e) Paramedic (non-transport): one paramedic;

(f) Paramedic inter-facility: one paramedic and one EMT, AEMT, EMT-IA, or paramedic;

(g) Paramedic tactical: one paramedic.

(3) A paramedic ground ambulance or paramedic provider shall deploy two paramedics to the scene of 911 calls for service requiring Advanced Life Support response, unless otherwise determined by local selective medical dispatch system protocols.

(4) When providing care, responders not in a uniform shall display upon request their level of medical licensure.

(5) Each licensed or designated provider shall maintain a personnel file for each licensed individual. The personnel file shall include records documenting the individual's qualifications, training, certifications, licensure, immunizations, and continuing medical education.

(6) A licensed individual may perform only to his licensed EMS provider level, even if the licensed EMS or designated provider is licensed or designated at a higher level.

R426-4-300. Permits and Inspections.

(1) A licensed ground ambulance or designated EMS provider shall only use vehicles for which the provider has obtained a permit from the Department. All new ground ambulances shall meet current State approved specifications and standards. Department policy for ground ambulances will be posted on the Bureau of Emergency Medical Services and Preparedness's website.

(2) A permit issued by the Department is valid for one year.

(3) The provider shall display the current permit location on vehicle in a location easily visible at ground level from outside of the vehicle.

(4) Permits and decals are not transferable to other vehicles.

(5) Each licensed ambulance and designated provider shall annually provide proof upon request that every operator of an emergency vehicle has successfully completed an emergency vehicle operator's course approved by the Department.

R426-4-400. Licensed Ground Ambulance and Designated QRU Provider Operations.

(1) Each licensed ground ambulance provider or designated QRU provider shall notify the Department of the permanent location of its ground ambulances and QRVs. The licensed ground EMS provider or designated QRU provider shall notify the Department in writing whenever it changes the permanent location for any permitted vehicles.

(2) Each licensed ground ambulance provider or designated QRU provider shall maintain each operational permitted vehicle on a premise suitable to make it available for immediate use, in good mechanical repair, properly equipped, and in a sanitary condition.

(3) Each licensed ground ambulance provider or designated provider shall maintain each operational vehicle in a clean condition with the interior being thoroughly cleaned after each use in accordance with OSHA standards and the provider's exposure control plan.

(4) Each licensed ground ambulance provider or designated provider shall equip each operational vehicle with adult and child safety restraints. To the point practicable and feasible, all occupants shall be safely restrained during operation.

(5) Each licensed ground ambulance provider or designated provider shall assure that each emergency vehicle operator who may drive the emergency vehicle:

(a) is at least 18 years of age;

(b) possesses a valid driver license;

(c) successfully passed the provider's criminal background check within the prior four years; and

(d) successfully completed a department approved emergency vehicle operator's course or refresher course within the past two years.

(6) The Department shall verify annually that licensed ground ambulance providers or designated providers are in compliance with this requirement.

R426-4-500. Scene and Patient Management.

(1) Designated emergency medical service dispatch centers shall use a selective medical dispatch system to determine which licensed ambulance provider will be notified for patient transport.

(2) When responding to a medical emergency call, EMS personnel shall follow protocols approved by the service provider's medical director, and act within their scope of practice.

(3) EMS personnel shall establish communication with on-line medical control as soon as reasonable.

(4) Licensed Paramedic tactical provider may only function at the invitation of the local or state public safety authority. When called upon for assistance, the licensed tactical paramedic provider shall immediately notify the local emergency medical service dispatch center to coordinate patient transportation.

R426-4-600. Pilot Projects.

(1) A person who proposes to undertake a research or study project which requires waiver of any rule shall have a project director who is a physician licensed to practice medicine in Utah, and shall submit a written proposal to the Department for presentation to the EMS Committee for recommendation.

(2) The proposal shall include the following:

(a) a project description that describes the

(b) need for project;

(c) project goal;

(d) specific objectives;

(e) approval by the provider off-line medical director;

(f) methodology for the project implementation;

(g) geographical area involved by the proposed project;

(h) specific rule or portion of rule to be waived;

(i) proposed waiver language;

(j) evaluation methodology;

(k) a list of the EMS providers and hospitals participating

in the project; and

(l) a signed statement of endorsement from the participating hospital medical directors and administrators, the director of each participating licensed paramedic and ambulance provider, other project participants, and other parties who may be significantly affected.

(3) If the pilot project requires the use of additional skills, a description of the skills to be utilized by the field EMS licensed personnel and provision for training and supervising the field EMS licensed personnel who are to utilize these skills, including the names of the field EMS licensed personnel.

(4) The name and signature of the project director attesting to his or her support and approval of the project proposal.

(5) If the pilot project involves human subjects' research, the applicant shall also obtain Department Institutional Review Board approval.

(6) The Department or Committee, as appropriate, may require the applicant to meet additional conditions as it considers necessary or helpful to the success of the project, integrity of the EMS system, and safety to the public.

(7) The Department or Committee, as appropriate, may initially grant project approval for one year. The Department or Committee, as appropriate, may grant approval for continuation beyond the initial year based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Department at least 90 days prior to the end of the approved period. A pilot project may not exceed three years.

(8) The Department or Committee, as appropriate, may only waive a rule if:

(a) the applicant has met the requirements of this section;

(b) the waiver is not inconsistent with statutory requirements;

(c) there is not already another pilot project being conducted on the same subject; and

(d) it finds that the pilot project has the potential to improve pre-hospital medical care.

(9) Approval of a project allows the field EMS licensed personnel listed in the proposal to exercise the specified skills of the participants in the project. The project director shall submit the names of field EMS licensed personnel not initially approved to the Department.

(10) The Department or Committee, as appropriate, may rescind approval for the project at any time if:

(a) those implementing the project fail to follow the protocols and conditions outlined for the project;

(b) it determines that the waiver is detrimental to public health; or

(c) it determines that the project's risks outweigh the benefits that have been achieved.

(11) The Department or Committee, as appropriate, shall allow the licensed or designated EMS provider involved in the study to appear before the Department or Committee, as appropriate, to explain and express its views before determining to rescind the waiver for the project.

(12) At least six months prior to the planned completion of the project, the medical director shall submit to the Department a report with the preliminary findings of the project and any recommendations for change in the project requirements.

R426-4-700. Confidentiality of Patient Information.

(1) Licensed or designated EMS providers and all licensed EMS personnel shall not disclose patient information except as necessary for patient care or as allowed by statute or rule.

R426-4-800. Permitted Vehicle Supply Requirements.

(1) In accordance with the licensed EMS provider level or designation type and level, the each permitted vehicle shall carry the quantities of supplies, medications, and equipment as described in the Department inspection requirements. The vehicle requirements shall be approved by the State EMS Medical Director and the State EMS Committee.

(2) Medical directors for licensed or designated providers are responsible to provide protocols, training, and quality assurance for all medications used by licensed individuals performing duties for their respective licensed or designated provider.

(3) If a licensed or designated EMS provider desires to carry different equipment, supplies, or medication from the vehicle supply requirements, the provider shall submit a written request from the certified off-line medical director to the Department requesting the waiver. The request shall include:

(a) a detailed training outline;

(b) protocols;

(c) proficiency testing;

(d) supporting documentation;

(e) local EMS Council or committee comments; and

(f) a detailed letter of justification.

(4) All non-disposable equipment shall be designed and constructed of materials that are durable and capable of withstanding repeated cleaning. The provider shall:

(a) clean the equipment after each use in accordance with OSHA standards;

(b) sanitize or sterilize equipment prior to reuse;

(c) not reuse equipment intended for single use;

(d) clean and change linens after each use; and

(e) store or secure all equipment in a readily accessible and safe manner to prevent its movement.

(5) The provider shall have all equipment tested, maintained, and calibrated according to the manufacturer's standards.

(6) The provider shall document all equipment inspections, testing, maintenance and calibrations. Testing or calibration conducted by an outside service shall be documented. Such inspections, testing and calibration shall be performed monthly. All testing documentation shall be maintained and available for Department review upon request.

(7) A provider required to carry any of the following equipment shall perform monthly inspections to ensure proper functionality:

(a) defibrillator, manual, or automatic;

(b) autovent;

(c) infusion pump;

(d) glucometer;

(e) flow restricted, oxygen-powered ventilation devices;

(f) suction equipment;

(g) electronic Doppler device;

(h) automatic blood pressure/pulse measuring device;

(i) pulse oximeter; and,

(j) any other electronic, battery powered, or critical care device.

(8) The licensed or designated EMS provider shall perform monthly inspections to ensure proper functionality of all equipment that require consumable items, power supplies, electrical cables, pneumatic power lines, hydraulic power lines, or related connectors.

(9) Unless otherwise authorized by the State EMS Medical Director, a licensed or designated EMS provider shall store all medications according to the manufacturers' recommendations, including temperature control and packaging requirements.

(10) All medication known or suspected to have been subjected to temperatures outside the recommended temperature range shall be return to the supplier for replacement.

(11) The Department shall maintain and publish requirements for ground ambulances, QRVs, and other designated providers on the Department's website.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-10. Air Ambulance Licensure and Operations.
R426-10-100. Authority and Purpose.

(1) This rule is established for the licensing requirements and operations for air ambulance providers.

R426-10-200. Air Ambulance Service Application and Licensure.

(1) No person, either as owner, agent or otherwise, shall furnish, operate, conduct, maintain, advertise or otherwise be engaged in the provision of emergency medical care using an air ambulance unless currently licensed by the State of Utah Department of Health. The state retains the right to conduct air ambulance service investigations per state law.

(2) The following shall be complied with to obtain a State of Utah air ambulance license:

(a) A person from another state shall not provide emergency medical services aboard an air ambulance within the state unless that person complies with the requirements under this chapter. This requirement applies to any person that provides patient care within the State of Utah.

(b) Applicants desiring to be licensed or to renew its license for an air ambulance service shall submit the applicable fees and application on Department-approved forms prior to being issued a license to operate.

(c) Applicants shall submit a copy of air ambulance service license(s) concurrently issued and on file with other states.

(d) Applicants shall provide information about individual aircraft that will be used while providing medical care licensed under this Chapter to the state for physical inspection of medical compliance.

(e) Applicants shall provide results to the Department from the prior 10 years of any investigations, disciplinary actions, or exclusions with the potential to impact the quality of medical care provided to patients. Such investigations, disciplinary actions, or exclusions that shall be reported apply to all current and prior legal names of the entity and all other names used by the entity to provide health care services (see R426-10-600, Change of Ownership/Management) and any person or entity who had direct or indirect ownership of at least 50% interest in the air ambulance service within the prior 10-year period.

(f) Applicants shall identify an air ambulance service medical director pursuant to requirements found in R426-5-2400. The medical director shall be responsible for medical direction and oversight regarding credentialing air medical providers, clinical practice, and all patient care issues. Personnel changes in medical director shall be reported to the Department within 30 days.

(g) Applicants shall submit all required fees, when applicable.

(h) When the name or ownership of the air ambulance service changes, an air ambulance service license application shall be submitted to the Department at least 30 days prior to the effective date of the change.

(i) Air ambulance services shall provide emergency information about the service to the Department. This information shall be used by the Department to provide effective communications and resource management, in the event of a statewide or localized disaster or emergency situation. The information is included in the initial and renewal application for certification of air ambulance services.

(j) Air ambulance permits and licenses are not transferable.

(k) Duplicate air ambulance permits and licenses can be obtained by submitting a written request to the Department. The request shall include a letter signed by the licensee certifying that the original permit and license has been lost, destroyed or rendered unusable.

(l) Each licensed air ambulance provider shall obtain a new air ambulance inspection and subsequent permit or certification from the Department prior to returning an air ambulance to service following a modification, change or any renovation that results in a change to the stretcher placement or seating in the air ambulance interior configuration to ensure the aircraft meets patient care requirements.

(m) The licensed air ambulance service shall file an amended list of aircraft that are used to provide service within the state to the Department within 30 days after an air ambulance is added or removed permanently from service.

(n) The licensure period for all licensed air ambulance services shall be for 4 years.

(o) Licensure authorizes the air ambulance provider only to provide emergency medical care using an air ambulance, and does not constitute authority to provide air transportation. Such authority shall be obtained from the Federal Aviation Administration and United States Department of Transportation.

(p) The following regulations shall not relieve the licensed air ambulance provider from compliance with other statutes, rules, or regulations in effect for medical personnel and emergency medical services, involving licensing and authorizations, insurance, prescribed and proscribed acts and penalties.

R426-10-300. Exceptions to Air Ambulance Service Application and Licensure.

(1) This rule does not apply to the following:

(a) An air ambulance or air ambulance service operated by an agency of the United States government.

(b) Services that provide rescue and evacuation equipment and aircraft owned and operated by a governmental entity whose primary role is not to transport patients by air ambulance, and who is not receiving payment for such services.

(c) Evacuation and rescue equipment used and owned by the department of public safety in air, ground, or water evacuation.

R426-10-400. Air Ambulance Service Deemed Status.

(1) The Department may grant deemed status for state license to an air ambulance provider that has received accreditation from a Department recognized accreditation service. An air ambulance provider who has deemed status may receive a license if they meet all of the requirements for application and licensure.

(2) To be recognized by the Department as an approved accreditation organization for the purposes of this section, the accrediting organization shall meet the following minimum standards:

(a) Publish standards that are equivalent to or exceed the standards in this chapter.

(b) Publish standards which address every component of a medical transport service that could potentially impact the quality of care and patient safety with respect to communications centers, pilots, drivers, maintenance, patient care providers, and administrative support.

(c) Provide evidence of timely reviews of applications from providers seeking accreditation.

(d) Procedures for random site visits, audits, and other strategies utilized to ensure an accredited provider or a provider seeking accreditation is adhering to the accreditation standards.

(e) Publish policies for the

(i) initial accreditation requirements;

(ii) the tenure of accreditation, not to exceed three (3) years;

(iii) the requirements for reaccreditation; and

(iv) the accreditation decision making process.

(f) Uses trained accreditation personnel with experience in medical transport at the level of accreditation and license for the level of accreditation being sought.

(g) A formal training program that educates accreditation auditors in consistent interpretation of standards and policies of the accreditation agency.

(h) Publish the required qualifications for accreditation personnel who conduct site surveys. Such qualifications must demonstrate an extensive depth of experience with and knowledge of the air ambulance industry.

(i) Policies and standards that recognize the special circumstances of medical transport services that serve rural areas.

(j) Demonstrate that accreditation standards are updated on a regular basis to stay current with changes in healthcare and air medical transportation.

(k) Provide definition of all sentinel events including near misses. The accrediting agency shall outline the processes for notifying the Department of such events and the process for investigating and instituting corrective measures for such events.

(l) Provide information about the Board of Directors. Members of the Board of Directors shall have experience in the air medical transport industry. The Board of Directors shall include broad representation by members of relevant national organizations that are engaged in the development, training, and oversight of critical care and air medical patient transportation.

(m) Clearly outline the Conflict of Interest Policy that excludes Board members or other accreditation agency representatives from participating in accreditation decisions, site surveys, or other processes when a real or potential conflict of interest exists.

(n) Publish fees for providers seeking accreditation.

(o) Provide documentation of the process that allows and encourages input, suggestions, and review by outside individuals and agencies related to its standards, policies, and procedures.

(p) Explain the procedure for a corrective action plan when an audit uncovers areas that are out of compliance.

(q) Demonstrate a continuous quality improvement process that reviews the application process, site surveys, accreditation decisions, and accreditation standards. The process must include measures to achieve improvement, fairness, and transparency.

(r) Maintain insurance (General liability, Medical Professional Liability, Directors and Officers and Travel) and be able to present their current certificates of insurance to the state licensing agency.

(s) Comply with all applicable Health Insurance Portability and Accountability Act (HIPAA) regulations, including any necessary requirements of a Business Associate entity.

(t) Allow a Department representative to be present during site surveys, investigations, and any other on-site visit performed in the Utah.

(u) Provide simultaneous notification to the Department of an air ambulance provider's accreditation decisions, corrective action, any changes in accreditation status, and sentinel event reports; and

(v) List the accrediting agency's involvement in research to improve the air medical transportation industry.

(3) A current list of recognized accreditation organizations is available on the Department's website.

R426-10-500. Air Ambulance Service Compliance with State Licensure Requirements.

(1) Deemed status recognition is intended to streamline the licensure process for air ambulance services by preventing duplicative documentation.

(2) The Department reserves the right to verify and inspect all equipment and documentation at any time to ensure that the air ambulance service maintains full compliance with requirements related to the air ambulance service licensure.

R426-10-600. Licensed Air Ambulance Provider Change of Ownership and Management.

(1) When a currently licensed air ambulance provider anticipates a change of ownership, the current licensed air ambulance provider shall notify the Department within thirty (30) calendar days before a change of ownership. A licensed air ambulance provider who is seeking a new license, shall submit an application for change of ownership along with the requisite fees and documentation within thirty (30) calendar days.

(2) The conversion of a licensed air ambulance provider's legal structure, or the legal structure of an entity that has a direct or indirect ownership interest in the licensed air ambulance provider is not a change of ownership unless the conversion also includes a transfer of at least 50 percent of the licensed air ambulance provider's direct or indirect ownership interest to one or more new owners. Specific instances of what does or does not constitute a change of ownership are set forth below in section (4).

(3) The Department shall consider the following criteria in determining whether there is a change of ownership of a licensed air ambulance provider that requires a new license:

(a) Sole proprietors:

(i) The transfer of at least 50 percent of the ownership interest in a licensed air ambulance provider from a sole proprietor to another individual, whether or not the transaction affects the title to real property, shall be considered a change of ownership.

(ii) Change of ownership does not include forming a corporation from the sole proprietorship with the proprietor as the sole shareholder.

(b) Partnerships:

(i) Dissolution of the partnership and conversion into any other legal structure shall be considered a change of ownership if the conversion also includes a transfer of at least 50 percent of the direct or indirect ownership to one or more new owners.

(ii) Change of ownership does not include dissolution of the partnership to form a corporation with the same persons retaining the same shares of ownership in the new corporation.

(c) Corporations:

(i) Consolidation of two or more corporations resulting in the creation of a new corporate entity shall be considered a change of ownership if the consolidation includes a transfer of at least 50 percent of the direct or indirect ownership to one or more new owners.

(ii) Formation of a corporation from a partnership, a sole proprietorship or a limited liability company shall be considered a change of ownership if the change includes a transfer of at least 50 percent of the direct or indirect ownership to one or more new owners.

(iii) The transfer, purchase, or sale of shares in the corporation such that at least 50 percent of the direct or indirect ownership of the corporation is shifted to one or more new owners shall be considered a change of ownership.

(d) Limited liability companies:

(i) The transfer of at least 50 percent of the direct or indirect ownership interest in the company shall be considered a change of ownership.

(ii) The termination or dissolution of the company and the conversion thereof into any other entity shall be considered a change of ownership if the conversion also includes a transfer of at least 50 percent of the direct or indirect ownership to one or more new owners.

(iii) Change of ownership does not include transfers of ownership interest between existing members if the transaction does not involve the acquisition of ownership interest by a new member. For the purposes of this subsection, "member" means a person or entity with an ownership interest in the limited liability company.

(4) Management contracts, leases or other operational

arrangements:

(a) If the owner of an air ambulance service enters into a lease arrangement or management agreement whereby the owner retains no authority or responsibility for the operation and management of the licensed air ambulance provider, the action shall be considered a change of ownership that requires a new license.

(5) Each applicant for a change of ownership shall provide the following information:

(a) The legal name of the entity and all other names used by it to provide health care services. The applicant has a continuing duty to notify the Department of all name changes at least thirty (30) calendar day prior to the effective date of the change.

(b) Contact information for the entity including mailing address, telephone and facsimile numbers, e-mail address and website address, as applicable.

(c) The identity of all persons and business entities with a controlling interest in the licensed air ambulance provider, including administrators, directors, managers and management contractors.

(i) A non-profit corporation shall list the governing body and officers.

(ii) A for-profit corporation shall list the names of the officers and stockholders who directly or indirectly own or control five percent or more of the shares of the corporation.

(iii) A sole proprietor shall include proof of lawful presence in the United States in compliance with section 24-76.5-103(4), C.R.S.

(d) The name, address and business telephone number of every person identified in R426-10-600 as ownership or management and the individual designated by the applicant as the chief executive officer of the entity. If the addresses and telephone numbers provided above are the same as the contact information for the entity itself, the applicant shall also provide an alternate address and telephone number for at least one individual for use in the event of an emergency or closure of the licensed air ambulance provider.

(e) Proof of professional liability insurance obtained and held in the name of the license applicant. Such coverage shall be maintained for the duration of the license term and the Department shall be notified of any change in the amount, type or provider of professional liability insurance coverage during the license term.

(f) Articles of incorporation, articles of organization, partnership agreement, or other organizing documents required by the secretary of state to conduct business in Utah; and by-laws or equivalent documents that govern the rights, duties and capital contributions of the business entity.

(g) The address of the entity's physical location and the name(s) of the owner(s) of each structure on the campus where licensed services are provided if different from those identified in elsewhere in this section.

(h) A copy of any management agreement pertaining to operation of the entity that sets forth the financial and administrative responsibilities of each party.

(i) If an applicant leases one or more building(s) to operate as a licensed air ambulance service, a copy of the lease shall be filed with the license application and show clearly in its context which party to the agreement is to be held responsible for the physical condition of the property.

(j) A statement signed and dated contemporaneously with the application stating whether, within the previous ten (10) years, any of the new owners have been the subject of, or a party to, one of more of the following events, regardless of whether action has been stayed in a judicial appeal or otherwise settled between the parties.

(i) Been convicted of a felony or misdemeanor involving crimes as described in R426-5-3100 under the laws of any state of the United States.

(ii) Had a state license or federal certification denied, revoked, or suspended by another jurisdiction.

(iii) Had a civil judgment or a criminal conviction in a case brought by federal, state or local authorities that resulted from the operation, management, or ownership of a health facility or other entity related to substandard patient care or health care fraud.

(iv) Certifies whether it is presently or has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a Contract by any governmental department or agency, whether international, national, state, or local, and certifies it is in compliance with Utah Code Ann. Section 63G-6a-904 et seq. and OMB guidelines at 2 C.F.R. 180 which implement Executive Order Nos. 12549 and 12689. Notification to the Department within thirty (30) days must occur if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during the tenure of the license.

(k) Any statement regarding the information requested in this section of rule shall include the following, if applicable:

(i) If the event is an action by federal, state or local authorities; the full name of the authority, its jurisdiction, the case name, and the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order or decision.

(ii) If the event is a felony or misdemeanor conviction involving moral turpitude, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court.

(iii) If the event involves a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision.

(6) The existing licensee shall be responsible for correcting all rule violations and deficiencies in any current plan of correction before the change of ownership becomes effective. In the event that such corrections cannot be accomplished in the time frame specified, the prospective licensee shall be responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless the prospective licensee submits a revised plan of correction, approved by the Department, before the change of ownership becomes effective.

(7) If the Department issues a license to the new owner, the previous owner shall return its license to the Department within five (5) calendar days of the new owner's receipt of its license.

R426-10-700. Air Ambulance Service Insurance Requirements.

(1) Applicants for licensure shall demonstrate liability coverage for injuries to persons and for loss or property damages resulting from negligence by the service or medical crew. A license holder shall immediately notify the Department and cease operations if the coverage required by this section is cancelled or suspended.

(2) The Department shall not issue an air ambulance license to an air ambulance provider unless the applicant for a license or the licensee has evidence of medical professional liability insurance that requires the insurer to compensate for injuries to persons or unintentional damage to property.

(a) Applicants shall provide a copy of the current certificates of insurance demonstrating coverage for each air ambulance medical crew member that demonstrates, at a minimum, aggregate limits of $1,000,000 per claim made and

a total of $3,000,000 for all claims made against the provider during the policy year.

(3) Worker's compensation coverage is required as defined by the State of Utah regulating bodies.

R426-10-800. Base Locations.

(1) A base location is the physical address where the crew, medical equipment and supplies, and the air ambulance are located. This will be designated by where the licensee operates and maintains or makes readily available records of operations.

(2) The Department may conduct announced and unannounced inspections at any locations where a licensed air ambulance provider operates at any time, including nights or weekends to determine compliance with these rules and regulations.

(3) Each base location shall have readily available at all times the following:

(i) Security measures in place that protects medical supplies and equipment onboard the air ambulance from tampering and unauthorized access, including pharmaceuticals. This would include direct visual monitoring or closed circuit television or the air ambulance must be in a secured location with locked perimeter fencing or hangar.

(ii) State license or certificate of operation prominently displayed within the building.

(iii) Evidence of medical professional liability insurance.

(iv) Drug Enforcement Agency Registration shall be prominently displayed within those buildings that store controlled substances.

(v) Current Post-Accident Incident Plan.

(vi) Documentation showing the professional certifications and licenses of all flight crew members.

(4) The facility shall be clean and free of debris at all times and shall be compliant with all state and local building and fire codes.

R426-10-900. Number and Type of Air Ambulances.

(1) Air ambulance providers shall provide a list of all air ambulances to be licensed and inspected for medical compliance by the Department, including tail number (N-Number) and designation of (rotor or fixed wing) capabilities.

R426-10-1000. Capabilities of Medical Communications.

(1) A licensed air ambulance provider shall have a communications network available consisting of reliable equipment designed to afford clear communications related to the number and condition of patients among all stakeholders within the system.

(2) The communication center shall demonstrate and maintain voice communications linkage with the radios and other allowable communication devices used in the air ambulance for the declared service area.

(3) Licensed air ambulance providers shall have two-way communications equipment available that allows for or has the following:

(a) Real-time patient tracking that shall be maintained and documented every 15 minutes including the time the air ambulance returns to service following transport.

(b) Appropriate wireless communications capabilities with dispatch centers, local first responders, to include fire, EMS, and law enforcement.

(c) Communications with medical referral and receiving facilities to exchange patient information and consult with medical control that shall be capable of communications exclusive of the air traffic control system.

(d) A dedicated telephone number for the air ambulance service dispatch center.

(4) The licensed air ambulance provider base station or communications network shall be manned during all phases of patient treatment and transport.

(5) An emergency plan for communications during power outages and in disaster situations shall be established.

(6) A policy for delineating methods for maintaining medical communications during power outages and in disaster situations.

R426-10-1100. Coordination of Medical Communications.

(1) All licensed air ambulance providers shall have flights coordinated by designated medical dispatchers or communications specialists.

(3) Communication specialists are required for processing requests, initiating responses, telecommunications, and assessing the capability for utilizing emergency medical dispatch protocols approved by the Department.

(4) Air ambulance communications specialists shall have training commensurate with the scope of responsibility given them by the particular licensed air ambulance provider.

(5) The following requirements shall apply to all air ambulance communications centers:

(a) Establish and maintain policies and procedures based on state or nationally accepted emergency medical dispatch standards and state or nationally accepted EMS clinical guidelines to aid in directing the daily operation of the air ambulance communications center.

(b) Coordinate air ambulance deployment activities and communications with primary 911 PSAP call centers and appropriate medical facilities.

(c) Require its communications specialists to satisfy performance standards that are based on state or nationally accepted emergency medical dispatch standards and state or nationally accepted EMS clinical guidelines.

(6) At a minimum, the air ambulance communications center's performance standards shall measure a communication specialist's ability to:

(a) Deploy the appropriate medical resources within the prescribed timeframe established by the communications center's standard operating procedures.

(b) Provide pertinent information to the appropriate 911 PSAP call center and receive updated information about the incident from the responding units or medical facilities.

(c) Establish a quality assurance review process that is executed with consistency and objectivity in accordance with internal standards developed by the licensed air ambulance provider.

R426-10-1200. Communications Specialists Personnel Qualifications.

(1) Communication specialists shall have appropriate training pertaining to EMS and medical transportation communications related to the provision of health care and receive certification within (1) year.

R426-10-1300. Pre-arrival and Hand-Off Communications to Hospitals or Emergency Patient Receiving Facilities.

(1) All licensed air ambulance providers shall have a plan in place to transmit significant clinical data to hospital or emergency patient receiving facility medical personnel prior to arrival.

(2) Licensed air ambulance providers shall start the process for transferring responsibility of patient care during patient transport to reduce the communication load on patient arrival to the facility as early as possible. Transfer of care documentation shall be part of the EMS record.

(3) Information transmitted to the hospital or the emergency patient receiving facility prior to arrival shall include:

(a) patient information;

(b) chief complaint;

(c) brief patient history;
(d) condition of patient;
(e) treatment provided; and
(f) estimated time of arrival.

(4) Information at the time of patient hand-off shall include a copy of the patient care report to the hospital or emergency patient receiving facility within 24 hours after the end of the patient transport. If a completed patient care report cannot be left at the facility at the end of the patient transfer to the hospital or emergency patient receiving facility, an abbreviated patient encounter form containing information essential to continued patient care shall be provided.

(5) Abbreviated Patient Encounter form shall include:
(a) patient information;
(b) chief complaint;
(c) brief patient history;
(d) allergies (if known);
(e) time and date of onset of symptoms;
(f) pertinent physical findings;
(g) patient medications (if known);
(h) vital signs;
(i) air medical treatment, including medications administered, IV fluids, procedures performed, and oxygen delivery; and
(j) transfer of care (name of air medical crew member to the receiving healthcare professional legibly included in documentation).

R426-10-1400. Data Collection, Submission and Call Volume.

(1) All licensed air ambulance providers shall have a system in place to collect, submit, monitor, and track all flight requests This information shall be submitted to the Department.

(2) All licensed air ambulance providers shall:

(a) Report the specified state minimum data set, as required by the Department for every request that results in the dispatch of an air ambulance, whether emergency prehospital, inter-hospital transport, aborted flight, cancellation of requested service, death on scene (non-transport), or refusal of care as requested by the Department.

(b) Provide a yearly call volume report or EMS agency status report documenting the number of flights made within that calendar year. This report shall contain the number of flights organized by emergency prehospital, inter-hospital transport, aborted flight, cancellation of requested service, death on scene, non-transport, or refusal of care to assist efforts related to evaluating patient care and the improvement of the EMS system.

R426-10-1500. Temporary Air Ambulance Use.

(1) A licensed air ambulance provider shall notify the Department when it temporarily removes a permitted air ambulance from service, or replaces it with a substitute air ambulance.

(2) Upon receipt of notification, the Department may issue a temporary permit for the operation of said air ambulance, as required by the Department.

R426-10-1600. Medical Operations Policies and Procedures.

(1) A detailed manual of policies and procedures shall be available for reference in the flight coordination office and available for inspection by the Department to assist with EMS system planning and resource coordination efforts.

(2) Personnel shall be familiar and comply with policies contained within the manual, which shall include all of the following:

(a) procedures for acceptance of requests, referrals, and/or denial of service for medically related reasons;

(b) a written description of the geographical boundaries and features for the service area, and a copy of the service area map;

(c) scheduled hours of operation;

(d) criteria for the medical conditions and indications or medical contraindications for flight;

(e) medical communication procedures, including but not limited to medically-related dispatch protocol, call verification, and advisories to the requesting party, to include procedures for informing requesting party of flight procedures, anticipated time of aircraft patient arrival, or cancellation of flight;

(f) criteria regarding acceptable destinations based upon medical needs of the patient;

(g) non-aviation safety procedures for medical crew assignments and notification, including rosters of medical personnel;

(h) written policy that ensures that air medical personnel shall not be assigned or assume cockpit duties concurrent with patient care duties and responsibilities;

(i) written policy that directs air ambulance personnel to honor a patient request for a specific service or destination when the circumstances will not jeopardize patient safety;

(j) medical communications procedures;

(k) flight cancellation and referral procedures;

(l) mutual aid procedures;

(m) a written plan that addresses the actions to be taken in the event of an emergency, diversion, or patient crisis during transport operations;

(n) patient tracking procedures that shall assure air/ground position reports at intervals not to exceed fifteen (15) minutes (inflight) and forty-five (45) minutes while landed on the ground;

(o) policy for delineating methods of maintaining medical communications during power outages and in disaster situations; and

(p) written procedures governing the licensed air ambulance provider's medical complaint resolution process and protocols. At a minimum, the licensed air ambulance provider shall designate personnel responsible for its dispute resolution process and provide the protocols it shall follow when investigation, tracking, documenting, reviewing, and resolving the complaint. The licensed air ambulance provider's complaint resolution procedures shall emphasize resolution of complaints and problems within a specified period of time.

R426-10-1700. Medical Transport Plans.

(1) To ensure proper patient care and the effective coordination of statewide emergency medical and trauma services, all licensed air ambulance providers shall have an integrated medical transport plan for each air ambulance permitted by the Department that describes the following:

(a) base location;

(b) hours of operation;

(c) emergency (dispatch) and non-emergency (business) contact information;

(d) description of primary and secondary service areas;

(e) medical criteria for utilization;

(f) description of medical capabilities (including availability of specialized medical transport equipment);

(g) communications capabilities including (but not limited to) radio frequencies and talk groups;

(h) procedures for communicating with the air medical crew; and

(i) mutual aid or backup procedures when the service is not available.

R426-10-1800. Coordination with Regional and State Disaster Preparedness Plans.

(1) To ensure coordinated response to local, regional, or statewide disaster, all licensed air ambulance providers shall

participate in regional and state disaster preparedness advisory groups, including preparedness planning meetings and scheduled exercises.

R426-10-1900. Medically Related Dispatch Protocols.

(1) When air ambulance transport is indicated, requests shall be coordinated through the local Public Safety Answering Point (PSAP) or 911 call center as part of an integrated response, whenever possible in order for the PSAP to be able to coordinate communications among all entities involved in the response.

R426-10-2000. Ethical Practices and Conduct.

(1) All licensed air ambulance providers shall have and follow a written code of conduct that demonstrates ethical practices including business, clinical operations, marketing and professional conduct.

(2) Licensed air ambulance providers are subject to disciplinary action, or may be denied licensure for unethical practices or conduct which includes but shall not be limited to the following:

(a) misrepresentation of the availability or level of medical or patient related services offered or provided; and

(b) failing to take appropriate action in safeguarding the patient from incompetent or inappropriate health care practices of emergency medical services personnel.

R426-10-2100. Continuous Quality Improvement (QI) Program.

(1) Licensed air ambulance providers shall establish a quality management team and a program implemented by this team to assess and improve the quality and appropriateness of patient care provided by the air ambulance services.

(2) The program shall include:

(a) development of protocols, standing orders, training, policies and procedures;

(b) approval of medications and techniques permitted for field use by service personnel in accordance with regulations of the Department;

(c) direct observation, field instruction, in-service training, or other means available to assess the quality of field performance; and

(d) Participation in local and regional performance improvement activities.

(3) All licensed air ambulance providers shall have a written policy that outlines a process to identify, document, and analyze sentinel events, adverse medical events, or potentially adverse events with specific goals to improve patient medical safety and/or quality of patient care.

(4) Policies shall include the following:

(a) review of events should address the effectiveness and efficiency of the organization, its support systems, as well as that of individuals within the organization;

(b) when a sentinel event is identified, a method of information gathering shall be developed, and shall include outcome studies, chart review, case discussion, or other methodology;

(c) findings, conclusions, recommendations, and actions shall be made and recorded including follow-up which also shall be determined, recorded, and performed; and

(d) training and education needs, individual performance evaluations, equipment or resource acquisition, patient medical safety and risk management issues shall be integrated with the continuous quality improvement process.

(5) All licensed air ambulance providers shall have a written policy outlining a utilization review process.

R426-10-2200. Staffing and Medical Personnel Requirements.

(1) At a minimum a licensed air ambulance provider shall have the following medical personnel:

(a) Medically qualified Utah licensed, or certified, individuals appropriate to the scope and mission of the licensed air ambulance provider, or EMS personnel recognized under an interstate compact of which Utah is a member. Acceptable medical personnel include, but are not limited to physicians(MD/DO), paramedics, registered nurses(RN), registered nurse practitioners(RN-P), advanced practice nurses, physician assistants(PA), respiratory therapists(RRT), or other allied health professionals.

(b) One medical attendant who is a licensed PA, RN, or MD/DO. This attendant shall be the primary medical attendant. The second medical attendant shall be a paramedic, PA, Respiratory Therapist, RN, or MD/DO.

R426-10-2300. Air Ambulance Staffing and Personnel Qualifications.

(1) Each patient transport by a licensed air ambulance provider requires a minimum of two (2) medically qualified staff who are licensed or certified according to Utah or providers recognized under an interstate compact, REPLICA, who provide direct patient care, plus a vehicle operator.

(2) The composition of the medical team may be amended for specialty missions upon approval and credentialing by the licensed air ambulance provider's medical director:

(a) The licensed nurse shall have appropriate specialty certification within two (2) years of hire and must have pre-hire experience in the medications and interventions necessary for the service's scope of care. The licensed nurse also shall have three (3) years critical care experience, which is no less than 4000 hours experience in an ICU or emergency department.

(b) The paramedic shall have a FP-C or CCP-C within (2) years of hire in addition to at least (3) years (minimum of 4000 hours) of advanced life support experience.

(c) The RRT shall have a minimum of 4000 hours of emergency department or ICU experience and appropriate specialty certification within two (2) years of hire.

(3) Medical personnel shall have cognitive, affective, and psychomotor abilities sufficient to meet the clinical needs for the type of patient missions served.

(4) A licensed air ambulance provider shall have a plan to assess and document the competency and proficiency of the personnel who provide medical services.

R426-10-2400. Air Ambulance Personnel Training Requirements.

(1) All licensed air ambulance providers shall have a documented, structured educational program required for all air ambulance personnel, including the medical director.

(2) The educational program shall at a minimum contain program orientation; initial and recurrent training which adheres to the services scope of care, patient population, mission statement and medical direction.

(3) Each medical crew member shall complete and document training in mission specific procedures related to patient care as established by the licensed air ambulance provider's medical director and such federal, state, or local agencies with authority to regulate licensed air ambulance providers. Documentation showing completion of all initial and recurrent training may be required by the Department for license renewal.

(4) Clinical experiences shall include but are not limited to the following:

(a) experiences specific to the mission statement and scope of care of the medical transport service;

(b) measurable objectives developed and documented for each experience listed below reflecting hands-on experience versus observation only;

(c) care of patients in the air medical environment including the impact of altitude and other stressors;

(d) advanced airway management;

(e) applicable medical device specific training (Automatic Implantable Cardioverter Defibrillator (AICD), Extracorporeal Membrane Oxygenation (ECMO), Intra-Aortic Balloon Pump (IABP), Left Ventricular Assist Device (LVAD), medication pumps, ventilators, etc.);

(f) cardiology;

(g) mechanical ventilation and respiratory physiology for adult, pediatric, and neonatal patients as it relates to the mission statement and scope of care of the medical transport service specific to the equipment;

(h) high risk obstetric emergencies;

(i) basic care for pediatrics, neonatal and obstetrics;

(j) emergency/critical care for all patient populations to include special needs population;

(k) hazardous materials recognition and response;

(l) management of disaster and mass casualty events;

(m) infection control and prevention; and

(n) ethical and legal issues.

R426-10-2500. Medical Staff and Patient Safety Welfare.

(1) Medical personnel scheduling and individual work schedules shall demonstrate strategies to minimize duty-time fatigue, length of shift, number of shifts per week, and day-to-night rotation.

(2) On-site scheduled shifts for a period to exceed twenty-four (24) hours are not acceptable under most circumstances.

(3) The following criteria shall be met for shifts scheduled more than twelve (12) hours:

(a) medical personnel are not required to routinely perform any duties beyond those associated with the transport services;

(b) medical personnel are provided with access to and permission for uninterrupted rest after daily medical personnel duties are met;

(c) the physical base of operations includes an appropriate place for uninterrupted rest;

(d) medical personnel shall have the right to call "time out" and be granted a reasonable rest period if the team member (or fellow team member) determines that he or she is unfit or unsafe to continue duty, no matter the shift length;

(e) there shall be no adverse personnel action or undue pressure to continue in a "time-out" circumstance;

(f)licensed air ambulance management shall monitor transport volumes and personnel's use of a "time out" policy;

(g) licensed air ambulance providers shall utilize a fatigue risk management tool that is widely recognized in the industry; and

(h) shifts extended over several days may be scheduled to address long commutes at programs with low volumes.

(4) The licensed air ambulance provider shall clearly demonstrate and document it meets this above criteria for shifts over twelve (12) hours.

(5) Provide at least (10) hours of rest in each twenty-four (24) hour period.

(6) If the location of the base is remote and one-way commutes are more than two (2) hours, transportation time shall be considered.

(7) Licensed air ambulance providers shall utilize a fatigue risk management tool that is widely recognized in the industry.

(8) Scheduling of on-call shifts shall be evaluated to address fatigue in a written policy based on monitoring of duty times by managers, quality management tracking, and fatigue risk management.

(9) The license air ambulance provider shall establish safety and infection control protocol that comply with the Occupational Safety and Health Administration (OSHA) Standards.

(10) The licensed air ambulance provider shall have an appropriate dress code that addresses mission specific hazards as well as jewelry, hair, and other personal items that may possibly be used by medical personnel that may interfere with patient care.

R426-10-2600. Air Ambulance Service Medical Director Qualifications.

(1) A licensed air ambulance provider's medical director who oversees the practice of the emergency medical services during patient transport shall be familiar with Utah state medical standards practices, and licensing requirements.

(2) A licensed air ambulance provider's medical director shall be a Utah licensed physician in good standing to supervise the medical care provided in an air medical environment.

(3) The medical director shall also:

(a) be board certified or board-eligible in EMS, emergency medicine, or other appropriate critical care specialty that services the patient population involved;

(b) have experience in the care of patients consistent with the licensing and mission profile of the air ambulance provider's service;

(c) designate other medical physician specialists for direction outside medical director's area of practice as appropriate to the licensed air ambulance provider's service mission profile;

(d) have access to medical specialists for consultation regarding patients whose illness and care needs are outside the medical director's area of practice;

(e) have a current DEA registration; and

(f) have current credentials achieved through active participation in patient care and continuing medical education activities appropriate for the role of a licensed air ambulance provider's medical director.

(4) The licensed air ambulance provider's medical director shall have familiarity in the following areas:

(a) care of patients in the air medical environment, including the impact of altitude and other patient stressors, in-flight assessment and care, monitoring capabilities, and limitations of the flight environment;

(b) hazardous materials recognition and response;

(c) management of disaster and mass casualty events;

(d) infection control and prevention;

(e) advanced resuscitation and care of adult, pediatric and neonatal patients with both traumatic and non-traumatic diagnoses;

(f) quality improvement theories and applications;

(g) principles of adult learning;

(h) capabilities and limitations of care in air ambulance;

(i) applicable federal, state, and local law, rules and protocols related to air ambulance providers and state trauma rule guidelines;

(j) air ambulance dispatch and communications; and

(k) ethical and legal issues related to air medical transport.

(5) The licensed air ambulance provider's medical director roles and responsibilities shall include:

(a) oversight of medical care provided by the air medical service provider;

(b) ensure competency and currency of all medical personnel;

(c) active engagement in the evaluation credentialing, initial training, and continuing education of all personnel who provide patient care;

(d) development and approval of written patient care guidelines, policies and protocols, including, but not limited to, those addressing the adverse impact of altitude on patient physiology and stressors of transport; and

(e) active engagement in quality management, utilization review, and safety reviews.

R426-10-2700. Patient Compartment General Standards.

(1) A licensed air ambulance provider shall ensure that a permitted air ambulance has the following:

(a) a climate control system to prevent temperature variations that would adversely affect patient care;

(b) the air ambulance shall have an adequate interior lighting system so that patient care can be given and the patient's status monitored;

(c) for each place where a patient may be positioned, at least one electrical power outlet or other power source that is capable of operating all electrically powered medical equipment without compromising the operation of any electrical air ambulance equipment;

(e) a back-up source of electrical power or batteries capable of operating all electrically powered life-support equipment for at least one hour;

(f) an appropriate power source which is sufficient to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical air ambulance equipment;

(g) an entry that allows for patient loading and unloading without excessive maneuvering and without compromising the operation of monitoring systems, intravenous lines, or manual or mechanical ventilation;

(h) If an isolette is used during patient transport, the operator shall ensure that the isolette is able to be opened from its secured in-flight position in order to provide full access to the patient;

(i) adequate access and necessary space to maintain the patient's airway and to provide adequate ventilatory support by an attendant from the secured, seat-belted position within the air ambulance;

(j) a configuration that allows for rapid exit of personnel and patients that will not allow obstruction from stretchers and medical equipment;

(k) an interior of the air ambulance that is sanitary and in good working order during use;

(l) secure positioning of cardiac monitors, defibrillators, and external pacers so that displays are visible to medical personnel; and

(m) provision for medications that maintains temperatures within manufacturer recommendations. Glass containers shall not be used unless required by medication specifications and be properly vented.

(2) Each air ambulance operator shall ensure that all medical equipment is appropriate to the air medical service's scope and mission and maintained in working order according to the manufacturer's recommendations.

(3) All permitted air ambulances shall be equipped to provide patient care according to approved medical protocols.

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R438. Disease Control and Prevention.
R438-15. Newborn Screening.
R438-15-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic and endocrine disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-6, 26-1-30 and 26-10-6.

R438-15-2. Definitions.

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R438-15-9.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.

(4) "Department" means the Utah Department of Health.

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the on-going health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "QNS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

R438-15-3. Newborn Screening Advisory Committee.

(1) Newborn Screening Advisory Committee shall be composed of at least 9 members as follows:

(a) an individual with an advanced degree (MS/PhD/MD) in genetics or other relevant field, who will serve as Chair;

(b) a representative from the Utah Hospital Association;

(c) a community pediatrician;

(d) the Director of the Division of Disease Control and Prevention;

(e) an advocate or a consumer of a newborn screening services;

(f) clinical consultants for the Newborn Screening program;

(g) a representative from the Utah Public Health Laboratory

(h) a representative from the Newborn Screening Follow-up Program;

(i) a representative from the research community with knowledge about disorders considered for future addition to the newborn screening panel.

(2) The Department Executive Director shall approve committee membership with counsel from the advisory committee.

(3) The term of committee members shall be four years;

(a) members may serve up to three additional terms as requested;

(b) if a vacancy occurs in the committee membership for any reason, a replacement shall be appointed for the unexpired term in the same manner as the original appointment;

(c) a majority of the committee constitutes a quorum at any meeting. If a quorum is present, the action of the majority of members shall be the action of the advisory committee.

(4) The committee shall:

(a) advise the Department on policy issues related to newborn screening services;

(b) provide guidance to programs and functions within the Department having to do with newborn screening services and

(c) evaluate potential tests that could be added to newborn or population screening and make recommendations to the Department.

R438-15-4. Implementation.

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R438-15-12.

(2) The Department of Health, after consulting with the Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

(a) Biotinidase Deficiency;

(b) Congenital Adrenal Hyperplasia;

(c) Congenital Hypothyroidism;

(d) Galactosemia;

(e) Hemoglobinopathy;

(f) Amino Acid Metabolism Disorders:

(i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);

(ii) Tyrosinemia type 1(fumarylacetoacetate hydrolase deficiency);

(iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);

(iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);

(v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);

(vi) Homocystinuria (cystathionine beta synthase deficiency);

(vii) Citrullinemia (arginino succinic acid synthase deficiency);

(viii) Argininosuccinic aciduria (argininosuccinic acid lyase deficiency);

(ix) Argininemia (arginase deficiency);

(x) Hyperprolinemia type 2 (pyroline-5-carboxylate dehydrogenase deficiency);

(g) Fatty Acid Oxidation Disorders:

(i) Medium Chain Acyl CoA Dehydrogenase Deficiency;

(ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;

(iii) Short Chain Acyl CoA Dehydrogenase Deficiency;

(iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(vi) Primary carnitine deficiency (OCTN2 carnitine

transporter defect);
(vii) Carnitine Palmitoyl Transferase I Deficiency;
(viii) Carnitine Palmitoyl Transferase 2 Deficiency;
(ix) Carnitine Acylcarnitine Translocase Deficiency;
(x) Multiple Acyl CoA Dehydrogenase Deficiency;
(h) Organic Acids Disorders:
(i) Propionic Acidemia (propionyl CoA carboxylase deficiency);
(ii) Methylmalonic acidemia (multiple enzymes);
(iii) Malonic Aciduria;
(iv) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);
(v) 2-Methylbutiryl CoA dehydrogenase deficiency;
(vi) Isobutyryl CoA dehydrogenase deficiency;
(vii) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;
(viii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);
(ix) 3-Methylcrotonyl CoA carboxylase deficiency;
(x) 3-Ketothiolase deficiency;
(xi) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;
(xii) Holocarboxylase synthase (multiple carboxylases) deficiency;
(i) Cystic Fibrosis;
(j) Severe Combined Immunodeficiency syndrome; and
(k) Disorders of Creatine Metabolism and
(l) Spinal Muscular Atrophy

R438-15-5. Responsibility for Collection of the First Specimen.

(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.

(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

R438-15-6. Timing of Collection of First Specimen.

The first specimen shall be collected between 24 and 48 hours of the newborn's life. Except:

(1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.

(2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

(a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;

(b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

R438-15-7. Parent Education.

The person who has responsibility under Section R438-15-5 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

R438-15-8. Timing of Collection of the Second Specimen.

A second specimen shall be collected between 7 and 16 days of age.

(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.

(2) If the newborn's first specimen was obtained prior to 24 hours of age, the second specimen shall be collected by fourteen days of age.

(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

R438-15-9. Criteria for Appropriate Specimen.

(1) The institution or medical home/practitioner collecting the appropriate specimen must:

(a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;

(b) Correctly store the Newborn Screening form;

(c) Not use the Newborn Screening form beyond the date of expiration;

(d) Not alter the Newborn Screening form in any way;

(e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;

(f) Apply sufficient blood to the filter paper;

(g) Not contaminate the filter paper with any foreign substance;

(h) Not tear, perforate, scratch, or wrinkle the filter paper;

(i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;

(j) Apply blood to the filter paper in a manner that does not cause caking;

(k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;

(l) Dry the specimen properly;

(m) Not remove the filter paper from the Newborn Screening form.

(2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 84119.

(a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.

(b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.

R438-15-10. Abnormal Result.

(1)(a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical

home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.

R438-15-11. Inadequate or Unsatisfactory Specimen, or QNS Specimen.

If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or medical home/practitioner noted on the Newborn Screening form.

(1) The institution or medical home/practitioner that submitted the inadequate or unsatisfactory, or QNS specimen shall submit an appropriate specimen in accordance with Section R438-15-9. The responsible institution or medical home/practitioner shall collect and submit the new specimen within two days of notice, and the responsible institution or medical home/practitioner shall label the form for testing as directed by the Department.

(2) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or medical home/practitioner to have an appropriate specimen collected.

R438-15-12. Testing Refusal.

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical home/practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.

R438-15-13. Access to Medical Records.

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

R438-15-14. Noncompliance by Parent or Legal Guardian.

If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.

R438-15-15. Confidentiality and Related Information.

(1) The Department initially releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R438-15-10(1) of any results that require follow up.

(3) The Department releases information to a medical home/practitioner or other health practitioner on a need to know basis. Release may be orally, by a hard copy of results or available electronically by authorized access.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

R438-15-16. Blood Spots.

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's Internal Review Board.

R438-15-17. Retention of Blood Spots.

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.

R438-15-18. Reporting of Disorders.

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.

R438-15-19. Statutory Penalties.

As required by Subsection 63G-3-201(5): Any medical home/practitioner or institution responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: health care, newborn screening

January 1, 2018	**26-1-6**
	26-1-30
	26-10-6

R452. Heritage and Arts, Arts and Museums, Museum Services.
R452-100. Certified Local Museum Designation.
R452-100-1. Authority and Purpose.

(1) This rule is enacted pursuant to Subsection 9-6-603(8).

(2) This rule establishes a program by which local museums may be designated as certified local museums.

R452-100-2. Requirements Museums Must Meet in Order to Be Considered Eligible for Application as a Certified Local Museum.

(1) In order to apply for certified local museum designation, a museum shall:

(a) be located in Utah;

(b) be a nonprofit organization that has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code;

(c) be organized on a permanent basis for educational or aesthetic purposes;

(d) have as its primary purpose the display or use of collections and exhibits;

(e) display objects to the public through facilities that it own or operates; and

(f) have at least one paid or unpaid staff member, or the equivalent, whose primary duty is the care, acquisition, or exhibition to the public of objects owned or used by the museum.

(2) A museum operated by a government entity need not satisfy the requirements of Subsection (1)(b).

R452-100-3. Application for Certified Local Museum Designation.

(1) A museum wishing to apply for the certified local museum designation shall:

(a) complete the form entitled "Certification Requirements for Museums" which is available from the Office of Museum Services;

(b) obtain a letter from the Department of the Treasury confirming that:

(i) the museum is registered as a nonprofit organization as described in Subsection R210-100-2(1)(b); and

(ii) the museum has been assigned an Employee Identification Number.

(c) submit both the form and the letter to the Office of Museum Services.

(2) A museum operated by a political subdivision of the state:

(a) need not comply with the requirements of Subsection (1)(b); and

(b) shall submit a letter to the Office of Museum Services:

(i) indicating that it is operated by a political subdivision of the state; and

(ii) providing an Employee Identification Number.

R452-100-4. Granting a Certified Local Museum Designation.

Upon receipt of the materials outlined in Section R210-100-3, the Office of Museum Services will provide a letter of certification to the applying museum.

KEY: certified local museums, museum services, museums
January 1, 2009 9-6-603(8)
Notice of Continuation December 20, 2018

R512. Human Services, Child and Family Services.
R512-43. Adoption Assistance.
R512-43-1. Purpose and Authority.

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) disability benefits by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (42 USC 673) as amended by Public Law 110-351 (October 7, 2008), 45 CFR 1356.40 (October 1, 2009), and 45 CFR 1356.41 (October 1, 2009) are incorporated by reference.

(4) This rule is authorized by Section 62A-4a-102.

R512-43-2. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means (a) the date an Intent to Adopt a Specific Child is signed with Child and Family Services, or (b) the adoption finalization court date.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care.

(a) If the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

(i) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(4) State IV-E agency means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(5) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(6) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-12-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-11. Assistance may be extended until a child reaches age 21 when the regional adoption assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to $2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be

limited to costs approved by the regional adoption assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, post-placement adoptive evaluation prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or Utah state adoption assistance agreement.

(c) The child's eligibility for SSI disability benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term care and treatment needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the Child and Family Services worker may initiate a change in the amount of subsidy at any time when needs or resources change.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and the Child and Family Services worker. Prior to subsidy negotiation, the adoptive parents must have reviewed the child's case file information and discussed in depth with the Child and Family Services worker what will be needed after the child leaves state's custody.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-12.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the Child and Family Services worker and adoptive family identify the child's level of need.

(b) The Child and Family Services worker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The Child and Family Services worker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical disability condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a mental health diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild cognitive disability, autism, or fetal alcohol spectrum disorder with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe cognitive disability, autism, or fetal

alcohol spectrum disorder; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as a need for ongoing self contained or special education services.

(d) The regional adoption assistance committee must approve the level of need identified for the child.

(e) A child's need level may be increased in severity by one level if the adoption assistance committee determines that the child's permanency may be compromised due to financial barriers to the child's adoption and if at least one of the following circumstances apply:

(i) The child has been in state custody for longer than 24 months.

(ii) The child is nine years of age or older.

(iii) The child is part of a sibling group of three or more children being placed together for the purposes of adoption.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need.

(c) A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date.

(d) A family may choose to receive a lesser amount than would be allowable for the level of need at a given point in time.

(e) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) A family may choose to receive a lesser amount than would be allowable for the child's level of need at a given point in time.

(g) Monthly subsidy payments for a child's needs categorized as Level Two range from 20 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(h) Monthly subsidy payments for a child's needs categorized as Level Three range from 50 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(i) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI for a disability by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) A child in foster care who meets the age criteria defined by the federal fiscal year qualifies for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iii) A child in foster care who has been in foster care for any previous 60 consecutive months may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iv) A child in foster care who is a sibling of another child in foster care who qualifies under the enhanced age criteria and is being adopted into the same family may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(v) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare.

(vi) The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement, and

(C) Title IV-E foster care maintenance payments were made on behalf of the child.

(vii) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(viii) The child had a previous IV-E adoption assistance agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy. The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite care, child care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI disability benefits, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet all Medicaid requirements, including application, citizenship verification, and annual review requirements in order for Medicaid to be initiated and continue throughout the period of the adoption assistance agreement.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to $3,000 will be considered and are subject to the approval of the regional adoption assistance committee.

(5) Supplemental adoption assistance requests from $3,001 to $10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding $10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the Region Director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the Region Director.

(9) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is $3,000 to $10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds $10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Assistance Committee.

(1) Each region shall establish at least one regional adoption assistance committee.

(2) The regional adoption assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

(a) Chairperson;

(b) Clinical consultant or casework supervisor;

(c) Regional budget officer or fiscal representative;

(d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

(a) Verification that a child qualifies for adoption assistance,

(b) Approval for reimbursement of allowable, reasonable non-recurring costs,

(c) Approval of level of need and amount of monthly subsidy for initial requests, changes, amendments, and renewals,

(d) Approval of supplemental adoption assistance up to $3,000,

(e) Extension of adoption assistance up to age 21 for a qualifying child,

(f) Renewal of adoption assistance, and

(g) Documentation of committee decisions.

R512-43-9. Adoption Assistance Review.

(1) The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.

(2) An agreement for supplemental adoption assistance exceeding $3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

R512-43-10. Adoption Monthly Subsidy Suspension.

(1) Monthly subsidy payments may be temporarily suspended in situations in which a payment is sent to a parent's home address and cannot be delivered or a direct deposit payment notice is returned to the office of Child and Family Services as unable to deliver. The monthly subsidy may be suspended until the parent contacts Child and Family Services to establish an address for the parent.

(a) After one year of suspended monthly subsidies, the monthly subsidy payment will be terminated.

(b) If the parent contacts Child and Family Services after termination of the monthly subsidy, Child and Family Services will repay up to one year of monthly subsidy payments at the amount determined in the Adoption Assistance Agreement.

R512-43-11. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

(a) The terms of the adoption assistance agreement are concluded.

(b) The adoptive parents request termination.

(c) The month following the child's 18th birthday, unless approval has been given by the adoption assistance committee to continue until the month following the child's 21st birthday due to mental or physical disability.

(d) The child dies.

(e) The adoptive parents die.

(f) The adoptive parents' legal responsibility for the child ceases.

(g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-5 shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

R512-43-12. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Child and Family Services decision to the Department of Human Services if:

(a) The adoption assistance application is denied;

(b) The adoption assistance application is not acted upon with reasonable promptness;

(c) Adoption assistance or supplemental adoption assistance is reduced, suspended, terminated, or changed without the concurrence of the adoptive parents;

(d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;

(e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-5 applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.

(ii) A denial of assistance was based upon a means test of the adoptive family.

(iii) An erroneous state determination was utilized to find a child ineligible for assistance.

(iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-5 applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-13. Interstate Adoption Assistance.

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI disability benefits shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care
December 24, 2018 62A-4a-102
Notice of Continuation January 25, 2016 62A-4a-106
62A-4a-901 through 62-4a-907

R512. Human Services, Child and Family Services.
R512-306. Out-of-Home Services, Transition to Adult Living Services, Education and Training Voucher Program.
R512-306-1. Purpose and Authority.

(1) The Education and Training Voucher Program assists individuals in out-of-home care to make a more successful transition to adulthood. The Education and Training Voucher program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

(2) The Education and Training Voucher Program is authorized by Public Law No. 107-133, which is incorporated by reference. 20 USC 1087kk and 20 USC 108711 (January 3, 2007) are also incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-306-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) Institution of higher education means a school that:

(i) Awards a bachelor's degree or not less than a two-year program that provides credit towards a degree, or

(ii) Provides not less than one year of training towards gainful employment, or

(iii) Is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets all of the following:

(A) Public or non-profit facility; and

(B) Accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and is authorized to operate in the state.

(b) Satisfactory progress means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

(c) GED means General Education Development.

(d) Child and Family Services means the Division of Child and Family Services.

(e) Full-time means enrollment in the standard number of credit hours for each semester or quarter as defined by the educational institution.

(f) Out-of-home care means substitute care for children in the custody of the Department of Human Services/Division of Child and Family Services and/or Native American Tribes.

(g) Part-time means enrollment in fewer credit hours than the full-time standard as defined by the educational institution.

R512-306-3. Scope of Program.

(1) To be eligible for the Education and Training Voucher Program, an individual must meet all of the following requirements:

(a) An individual in out-of-home care who has not yet reached 26 years of age, or

(b) An individual no longer in out-of-home care who reached 18 years of age while in out-of-home care and who has not yet reached 26 years of age, or

(c) An individual adopted or entered guardianship from out-of-home care after reaching 16 years of age and who has not yet attained 26 years of age, and

(d) Has an individual educational assessment and individual education plan completed by Child and Family Services or their designee;

(e) Submits a completed application for the Education and Training Voucher Program;

(f) Has applied for or been accepted to a qualified college, university, or vocational program;

(g) Applies for available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

(h) Enrolls as a full-time or part-time student in the college, university, or vocational program; and

(i) Maintains a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

(2) The application and attachments will be reviewed and approved by regional Transition to Adult Living program staff or their designee. Individuals meeting all requirements will be accepted for program participation when Education and Training Voucher Program funding is available. If demand exceeds available funding, Child and Family Services may establish a waiting list, which will then be awarded to the applicants in the order received on a first-come first-serve basis for funding or Child and Family Services may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a written reason for denial will be provided.

(3) If an application for benefits under the Education and Training Voucher Program is denied, the applicant has the right to appeal the decision through an administrative hearing in accordance with Section 63G-4-301.

(4) The individual may participate in the Education and Training Voucher Program until:

(a) The completion of the degree or vocational program; or

(b) The individual reaches age 26 years; or

(c) The individual has completed a maximum of five years in the Education and Training Voucher Program.

(5) The individual must provide ongoing documentation of full-time or part-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to Child and Family Services in order to continue receiving benefits under the program.

(6) A program participant who receives less than a 2.0 GPA in a single grading period will be placed on probationary status and,

(a) The individual will receive written notice of the probationary status. The individual will have one subsequent grading period to regain or show significant progress toward a 2.0 GPA to continue in the program.

(b) Upon completion of a satisfactory grading period, the participant will be notified that the probation period is over.

(c) The participant that does not receive satisfactory grades while on probation will receive written notice of loss of eligibility for the Education and Training Voucher Program.

(7) An individual under age 26 years who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress may reapply for the program at any time.

(8) An individual may receive vouchers up to a maximum amount of $5,000 per year through the Education and Training Voucher Program. Amounts are determined by the cost of tuition at specific educational institutions and enrollment status.

(a) In accordance with 20 USC 1087kk, the total amount awarded may not exceed the total cost of attendance, as described in R512-306-4, minus:

(i) Expected contributions from the individual's family; and

(ii) Estimated financial assistance from other State or Federal grants or programs.

(b) Awards are subject to the availability of Child and Family Services Education and Training Voucher Program funds appropriated for this program.

(c) In accordance with 42 USC 677, the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining an individual's eligibility for, or amount of, any other Federal or Federally

supported assistance.

KEY: out-of-home care, Transition to Adult Living
December 24, 2018 62A-4a-102
Notice of Continuation October 19, 2018 62A-4a-105
63G-4-301
Pub. L. 115-123, Section 50753©

R527. Human Services, Recovery Services.
R527-275. Passport Release.
R527-275-1. Purpose and Authority.

1. The Office of Recovery Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. The purpose of this rule is to specify the procedures for the office to release an obligor's passport after it has been denied for failure to pay child support.

R527-275-2. Federal Requirements.

The Office of Recovery Services/Child Support Services (ORS/CSS) adopts the federal regulations as published in 22 CFR 51.60, 51.70, 51.71(1), 51.72, 51.73, and 51.74 April 1, 2008 ed., which are incorporated by reference in this rule.

R527-275-3. Passport Release Criteria.

1. If the obligor applies for a new passport or to have a previously-issued passport renewed and is notified that the application has been denied for failure to pay child support, the obligor must contact ORS/CSS to get the passport released. The passport will be released if the obligor pays all past-due child support owing to the state IV-D Agency and/or obligee.

2. If the obligor's employment requires a valid passport or there are other extenuating circumstances that require the obligor to maintain a valid passport, an exception may be granted if:

a. the case is IV-A - if the ORS or CSS Director approves an exception to the payment-in-full requirement.

b. the case is non-IV-A:

i. if the ORS or CSS Director approves an exception to the payment-in-full requirement; and,

ii. if the child support is owed to the obligee, ORS/CSS is able to obtain written approval from the obligee to release the passport.

KEY: child support, passport
June 9, 2009 **18 U.S.C. 1073**
Notice of Continuation December 14, 2018 **22 CFR 51.60**
22 CFR 51.70
22 CFR 51.71(1)
22 CFR 51.72
22 CFR 51.73
22 CFR 51.74
62A-11-107

R539. Human Services, Services for People with Disabilities.
R539-10. Short-Term Limited Waiting List Services.
R539-10-1. Purpose and Authority.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for persons on the waiting list to receive short-term, limited services from the Division.

(2) This rule is authorized by Subsections 62A-5-102(2); 62A-5-102(7).

R539-10-2. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.

(2) In addition:

(a) "Active Status" means a person has a current needs assessment score and is on the Division's waiting list.

(b) "Respite" is a service provided in a person's residence or other approved residential setting, designed to give relief to or during the temporary absence of a person's primary caregiver.

R539-10-3. Eligibility.

(1) A person is eligible for short-term limited waiting list services if:

(a) the person is not receiving ongoing services with the Division; and

(b) the person is currently in active status on the Division's waiting list.

R539-10-4. Limitations.

(1) With the exception of Short-Term Limited Respite Care Services, funds granted must be used during the fiscal year in which they are granted, beginning July 1st of the year granted and ending June 30th of the following year.

(a) If there is no plan to use the funds or if the funds are unused, those funds will return to the Division and may be reallocated to another eligible person.

(2) Funds granted for Short-Term Limited Respite Care Services must be used within 365 days of the date in which the plan is activated.

(a) if funds are unused within 365 days of the date in which the plan is activated, those funds will return to the Division and shall be reallocated to another eligible person as set forth in Subsection R539-10-5(2)(c).

(3) Funds may be withdrawn or reduced at any time and the establishment of a person's budget does not constitute an obligation for the Division to provide services or funding.

R539-10-5. Selection for Short-Term Limited Respite Care Services.

(1) Non-lapsing Funds may be available to provide short-term limited respite care services for persons determined eligible who are on the Division's waiting list.

(2) If the Division determines that sufficient funds are available to provide short-term limited respite care services, persons will be selected to receive short-term limited respite care according to the following method:

(a) The Division shall identify all persons on the waiting list who have indicated that they are in need of respite services;

(b) Persons identified by the Division as needing respite services, who had not been selected to receive respite services in the previous selection period, shall be grouped together, from which the Division shall use a random selection process to select persons to receive short-term limited respite care services.

(c) if the Division determines that sufficient funds are available to provide additional short-term limited respite care services, after all persons who had not been selected to receive respite services during the previous selection period have been given an opportunity to receive short-term limited respite care services, the Division may use a random selection process to select persons to receive short-term limited respite care services from the remaining persons on the waiting list who have indicated that they are still in need of respite services regardless of whether the person had been selected previously.

(d) a sibling of a person selected to receive short-term limited respite care services, at the discretion of the Division, may also be selected to receive short-term limited respite care services in the same selection period despite not being selected.

(3) Notwithstanding the foregoing, the Division Emergency Services Management Committee (ESMC) may select a person on the waiting list to receive short-term limited respite care services if the ESMC determines that short-term limited respite care services are appropriate to address the emergency circumstances faced by the person.

R539-10-6. Short-Term Limited Respite Care Provider Options.

(1) Short-term limited respite care services may be provided through either the Self-Administered Services Model or the traditional Agency-Based Provider Model or a combination of both.

(2) If the person elects the Self-Administered Services Model to provide short-term limited respite care, the following requirements must be met:

(a) the person must select a fiscal agent, through which all payments to employees must be made;

(b) the person must adhere to all additional requirements set forth in Section R539-5.

R539-10-7. Short-Term Limited Service Brokering Services.

(1) Non-lapsing Funds may be available to provide short-term limited service brokering services for persons determined eligible who are on the Division's waiting list.

(2) When the Division determines that sufficient funds are available to provide short-term limited service brokering services, persons will be selected to receive short-term limited service brokering services according to need as determined from information supplied to the Division.

KEY: waiting lists, family preservation, respite, service brokering
October 11, 2017 62A-5-102(7)
Notice of Continuation December 11, 2018

R590. Insurance Administration.
R590-248. Mandatory Fraud Reporting Rule.
R590-248-1. Authority.

This rule is promulgated pursuant to Section 31A-2-201(3)(a), which authorizes rules to implement the Insurance Code and 31A-31-110, which authorizes a rule to provide a process by which a person shall report a fraudulent insurance act.

R590-248-2. Purpose and Scope.

(1) The purposes of this rule are to:

(a) describe the required elements in a mandatory fraud report; and

(b) establish a reporting process for fraud reports.

(2) This rule applies to:

(a) all insurers doing the business of insurance in Utah; and

(b) all auditors employed by a title insurer doing the business of title insurance in Utah.

R590-248-3. Mandatory Elements of a Fraud Report.

A mandatory fraud report shall:

(1) be in writing;

(2) provide information in detail relating to:

(a) the fraudulent insurance act; and

(b) the perpetrator of the fraudulent insurance act; and

(3) state whether the person submitting the report of a fraudulent insurance act also reported the fraudulent insurance act in writing to:

(a) the attorney general;

(b) a state law enforcement agency;

(c) a criminal investigative department or agency of the United States;

(d) a district attorney; or

(e) the prosecuting attorney of a municipality or county; and

(4) state the agency to which the person reported the fraudulent insurance act.

R590-248-4. Mandatory Fraud Reporting Process.

(1) The following persons shall report a fraudulent insurance act to the commissioner if the person has a good faith belief on the basis of a preponderance of the evidence that a fraudulent insurance act is being, will be, or has been committed by:

(a) a person other than the person making the report:

(b) an insurer; or

(c) an auditor that is employed by a title insurer.

(2) An auditor employed by a title insurer shall report a fraudulent act to the title insurer and the title insurer shall report the fraudulent act in accordance with this subsection.

(3) An insurer shall submit mandatory fraud reports electronically.

(4) An insurer shall report a fraudulent insurance act by:

(a) submitting a report to the commissioner using the National Insurance Crime Bureau (NICB) fraud reporting system; or

(b) submitting a report directly to the commissioner using email sent to fraud@utah.gov.

R590-248-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-248-6. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-248-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, mandatory fraud reporting
April 7, 2017 31A-2-201
Notice of Continuation December 21, 2018 31A-31-110

R590. Insurance, Administration.
R590-249. Secondary Medical Condition Exclusion.
R590-249-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3) wherein the commissioner may adopt rules to implement the provisions of Title 31A and 31A-22-613.5(2)(e) wherein the commissioner shall develop examples of limitations or exclusions of a secondary medical condition.

R590-249-2. Purpose and Scope.

(1) The purpose of this rule is to establish examples of limitations or exclusions from coverage, including related secondary conditions.

(2) This rule applies to all health benefit plans.

R590-249-3. General Instructions.

The insurer shall provide a clear written statement that discloses the policy limitations and exclusions, including related secondary medical conditions that are set forth in the policy:

(1) upon application;

(2) when requested by the insured; and

(3) in any materials a carrier is required to provide to an insured, including the Summary of Benefits and Coverage as defined in 45 CFR 147.200.

R590-249-4. Examples.

The following policy limitation or exclusion examples are not all inclusive:

(1) charges in connection with reconstructive or plastic surgery that may have limited benefits, such as, a chemical peel that does not alleviate a functional impairment;

(2) complications relating to services and supplies for, or in connection with, gastric or intestinal bypass, gastric stapling, or other similar surgical procedure to facilitate weight loss, or for, or in connection with, reversal or revision of such procedures, or any direct complications or consequences thereof;

(3) complications by infection from a cosmetic procedure, except in cases of reconstructive surgery:

(a) when the service is incidental to or follows a surgery resulting from trauma, infection or other diseases of the involved part; or

(b) related to a congenital disease or anomaly of a covered dependent child that has resulted in functional defect; or

(4) complications that result from an injury or illness resulting from active participation in illegal activities.

R590-249-5. Penalties.

Any insurer found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to the penalties as provided under Section 31A-2-308.

R590-249-6. Enforcement Date.

The commissioner will begin enforcing this rule January 1, 2016.

R590-249-7. Severability.

If any provision or portion of this rule or the application of it to any person, company or circumstance is for any reason held to be invalid, the remainder of the rule or the applicability of the provision to other persons, companies, or circumstances shall not be affected.

KEY: health insurance, exclusions
October 10, 2014 31A-22-613.5
Notice of Continuation December 21, 2018

R590. Insurance Department, Administration.
vR590-278. Consent Requests Under 18 USC 1033(e)(2).
R590-278-1. Authority.

This rule is adopted pursuant to the following:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to make rules to implement the provisions of Title 31A; and

(2) Subsection 31A-23a-111(5)(b) that authorizes the commissioner to act in compliance with the federal Violent Crime Control and Law Enforcement Act of 1994, 18 USC 1033.

R590-278-2. Consent Request Made by Filing Request for Agency Action.

(1) A request under 18 USC 1033(e)(2) for the commissioner's written consent to engage or participate in the business of insurance shall be initiated by filing a request for agency action. The form "Request for Agency Action Re: 18 USC 1033(e)(2)", available on the department's website, shall be used to make the request. After completion, the form shall be filed as directed in Sections R590-160-5 or R590-160-5.5

(2) A request for agency action under this rule is a request for a formal adjudicative proceeding and is governed by the relevant provisions of the Utah Administrative Procedures Act, Title 63G, Chapter 4, and Section R590-160.

R590-278-3. Hearing on Request for Agency Action.

(1) A presiding officer shall conduct a hearing on the merits of a request for agency action under this rule.

(2) After the hearing, the presiding officer shall submit to the commissioner the record of the proceeding, recommended findings of fact and conclusions of law, and a recommended order.

(3) The commissioner shall issue final Findings of Fact and Conclusions of Law and a final Order which constitute final agency action that is not subject to agency review.

(4) A party may seek judicial review of the final agency action as provided in the Utah Administrative Procedures Act, Title 63G, Chapter 4.

R590-278-4. Determining Consent Request.

Written consent may be granted if, in the commissioner's sole discretion, a preponderance of the evidence shows that the petitioner is trustworthy to engage or participate in the business of insurance. The following are relevant to that determination:

(1) Any materially false or misleading statement or omission in the request for agency action;

(2) The nature, severity and number of the petitioner's crimes;

(3) The petitioner's age at the time the crimes were committed;

(4) The lengths of the sentences;

(5) The length of time since the petitioner's most recent conviction;

(6) The petitioner's rehabilitation, including evidence of counseling, community service, completion of probation, and payment of restitution, fines and interest if applicable;

(7) Any reference letter;

(8) The presence of any fact or circumstance in the petitioner's current life that may have motivated the petitioner to commit crime in the past;

(9) Any unpaid judgment; or

(10) Information received from the National Association of Insurance Commissioners and any insurance regulatory official.

R590-278-5. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
December 24, 2018 **31-A-23a-111(5)(b)**
31A-2-201(3)

R590. Insurance Department, Administration.
R590-279. Rule Designating Fraud Division Offices as a Secured Area.
R590-279-1. Authority.

This rule is adopted pursuant to the following:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to make rules to implement the provisions of Title 31A; and

(2) Section 76-8-311.1 that authorizes the commissioner, as a person in charge of a law enforcement facility, to establish secure areas within the facility and to prohibit or control by rule any firearm, ammunition, dangerous weapon, or explosive in that facility.

R590-279-2. Prohibition.

(1) An area, other than an area generally accessible to the public, that is owned, leased or operated by the commissioner for law enforcement officers employed pursuant to Section 31A-2-104 is established as a secure area in which any firearm, ammunition, dangerous weapon, or explosive is prohibited.

(2) Any firearm, ammunition, dangerous weapon, or explosive in the possession of a law enforcement officer is exempt from the prohibition in Subsection (1).

R590-279-3. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, firearms
December 24, 2018 **76-8-3.11.1**
31A-2-201(3)

R602. Labor Commission, Adjudication.
R602-7. Adjudication of Discrimination Claims.
R602-7-1. Statutory Authority.

Section 34A-5-107(5)(c) provides a right for a person filing a charge of discrimination with the Utah Antidiscrimination and Labor Division to file a written request to the Division of Adjudication for an evidentiary hearing to review de novo a determination and order issued by the Utah Antidiscrimination and Labor Division. Section 34A-5-107(13) authorizes the Labor Commission to establish rules governing these proceedings.

R602-7-2. Applicability of Rule.

The provisions of R602-7 pertaining to requests for hearing pursuant to Section 34A-5-107 (5) (c) supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-5, R602-6 and R602-8 as to any actions brought pursuant to Section 34A-5-107 (5) (c).

R602-7-3. Adjudication of Actions Commenced Pursuant to Section 34A-5-107(5)(c).

1. Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Request for De Novo Review" pursuant to Section 34A-5-107(5)(c) means a written request filed with the Commission and directed to the Division requesting de novo review of a specific Determination and Order issued by the Utah Antidiscrimination and Labor Division and shall include the following:

A. the name, mailing address, electronic address and telephone number of the party seeking de novo review and of their attorney, if applicable.

B. the name, mailing address, electronic address and telephone number of the opposing parties and of their attorney if applicable.

C. the date the Determination and Order was issued by the Utah Antidiscrimination Division.

D. a request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

iv. "Petitioner" means the charging party in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

v. "Respondent" means the respondent in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

b. Scheduling Conference and Order.

Upon receipt of the Request for De Novo Review the Division may schedule a scheduling conference to be attended by the parties and, where required by R602-1-3.1, their attorneys. The Division will issue a Scheduling Order containing deadlines and requirements for the filing of Petitioner's Statement, deadlines and requirements for the filing of Respondent's Answer, discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Respondent's Answer.

The Respondent's Answer shall include:

i. the name, mailing address, electronic address and telephone number of the party;

ii. the Adjudication Division's file number;

iii. the name of the adjudicative proceeding;

iv. an admission or denial of the specific facts alleged by the Petitioner.

v. any affirmative defenses relied on by the Respondent and specific facts in support of the affirmative defenses.

vi. a statement summarizing the reasons that the relief requested by the Petitioner should be denied.

vii. the signature of the person filing Respondent's Answer.

d. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of damages claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. Unless otherwise stipulated by the parties or ordered by the administrative law judge, the disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures and other discovery. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures and discovery shall be made in writing, signed and served. Discovery and disclosure documents may be delivered by electronic means.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

(Aa) Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C.P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

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

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate

intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty reasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Respondent's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form or requirement for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon his or her own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas.

Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302(1)(c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

d. Notices

i. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

ii. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

2. Motions - Time to Respond.

Unless otherwise provided by statute or the Administrative Law Judge, responses to all motions shall be filed within ten (10) days from the date the motion was filed with the Adjudication Division.

R602-7-4. Hearings.

1. Evidentiary hearings shall be conducted formally in accordance with Utah Code Section 63G-4-206. The petitioner shall have the burden of proving the claim of discrimination by a preponderance of evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208 and Utah Administrative Rule R602-1-4.

2. In those cases where the Utah Antidiscrimination and Labor Division in its Determination and Order made a reasonable cause finding, the Utah Antidiscrimination and Labor Division shall be given an opportunity at the evidentiary hearing to briefly outline the basis of its Determination. The presentation by the Utah Antidiscrimination and Labor Division shall not be considered evidence by the administrative law judge in issuing an order.

R602-7-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Division in accordance with the provisions of Utah Code Subsection 34A-5-107 (11), 63G-4-301 and Utah Administrative Rule R602-1-4. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental

Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

R602-7-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petition for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401 and Utah Administrative Rule R602-1-4.

KEY: discrimination, administrative procedures, hearings, settlements
June 22, 2011 34A-5-107
Notice of Continuation November 26, 2018 63G-4-102 et seq.

R602. Labor Commission, Adjudication.
R602-8. Adjudication of Utah Occupational Safety and Health Citation Claims.
R602-8-1. Statutory Authority.

Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304 provide that an administrative law judge from the Division of Adjudication shall hear and determine timely filed contests of citations issued by Utah Occupational Safety and Health. Sections 34A-1-304, 34A-6-104(1)(c) and 34A-6-301(7)(a) authorize the Labor Commission to promulgate rules governing these proceedings.

R602-8-2. Applicability of Rule.

The provisions of R602-8 pertaining to requests for hearing pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304 supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-5, R602-6 and R602-7 as to any actions brought pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

R602-8-3. Adjudication of Actions Commenced Pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

1. Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Notice of Contest" pursuant to Section 34A-6-303 means a written request filed with the Commission and directed to the Division requesting an evidentiary hearing on a citation issued by the Utah Occupational Safety and Health Division and shall include the following:

A. the name, mailing address, electronic address and telephone number of the party filing the Notice of Contest and that of their attorney, if applicable.

B. the date and number of the citation issued by the Utah Occupational Safety and Health Division.

C. An admission or denial of the specific facts alleged in support of each violation alleged in the citation and a statement of agreement or disagreement with each proposed penalty set forth in the citation.

D. Any affirmative defenses relied on by the cited party and specific facts in support of the affirmative defenses.

E. A request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

F. A statement requesting or declining an informal conference with the Administrator of Utah Occupational Safety and Health Division.

iv. "Petitioner" means Utah Occupational Safety and Health Division.

v. "Respondent" means the person or entity cited by Utah Occupational Safety and Health Division.

b. Scheduling Conference and Order.

Upon receipt of the Notice of Contest the Division may schedule a scheduling conference to be attended by the parties and, where required by R602-1-3.1, their attorneys. The Division will issue a Scheduling Order containing deadlines and requirements for the litigation including discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of fines or penalties claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. The disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the Administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures and other discovery. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures and discovery shall be made in writing, signed and served. Discovery and disclosure documents may be delivered by electronic means.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or

defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

Aa. Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

Aa. A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

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

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(7)(J) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty reasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or

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

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Petitioner's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas. Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302 (1)(c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

2. Notices

a. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

b. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

3. Motions - Time to Respond.

Unless otherwise provided by statute or the Administrative Law Judge, response to all motions shall be filed within ten (10) days from the date the motion was filed with the Adjudication Division.

R602-8-4. Hearings.

Evidentiary hearing shall be conducted formally in accordance with Utah Code Section 63G-4-206. Petitioner shall have the burden of proving the factual and legal sufficiency of the citation and penalty by a preponderance of evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208 and Utah Administrative Rule R602-1-4.

R602-8-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Utah Code Sections 34A-6-304, 63G-4-301 and Utah Administrative Rule R602-1-4. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

R602-8-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petitioner for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401 and Utah Administrative Rule R602-1-4.

KEY: occupational safety and health, administrative procedures, hearings, settlements

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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:

Optum360 Essential RBRVS 2018 annual 1st Quarter Update," (edition includes RBRC18/U1791 and U1791R2) ("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): $62.00;

2. Medicine (Evaluation and Medicine codes 99203-99204 and 99213-99214): $56.00;

3. Medicine (all other Evaluation and Medicine codes): $52

4. Pathology and Laboratory: $56.00;

5. Radiology: $58.00;

6. Restorative Services: $50.00;

7. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): $65.00;

8. 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; 97169, athletic training evaluations; 97172, athletic training reevaluation.

3. All restorative services provided must be itemized even if not billed.

4. Medical providers billing under CPT codes 97161 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 80305, 80306, or 80307 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 97169 to 97172;

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. 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

January 1, 2019	**34A-1-104**
Notice of Continuation February 8, 2018	**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, 2019, as established by the Labor Commission, shall be:

1. 0.25% for the Uninsured Employers' Fund;
2. 2.0% 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
January 1, 2019 59-9-101(2)
Notice of Continuation February 8, 2018

R651. Natural Resources, Parks and Recreation.
R651-103. Electronic Meetings.
R651-103-1. Purpose and Authority.

This rule is established under the authority of Title 52; Chapter 4; Section 207 to provide the standards and procedures for electronic meetings of the Board of Parks and Recreation; the Off-highway Vehicle Advisory Council; the Recreational Trails Advisory Council and the Boating Advisory Council.

R651-103-2. Definitions.

(1) Terms used in this rule are defined as follows:

(a) "Anchor location" means the physical location from which:

(i) An electronic meeting originates; or

(ii) The participants are connected.

(b) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

R651-103-3. Electronic Meetings.

(1) Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Board and Advisory Council meetings by electronic means.

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

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

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

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

(iii) The meeting agenda; and

(iv) The date and time of the meeting.

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

(i) At the anchor location;

(ii) On the Utah Public Notice Website; and

(iii) To at least one newspaper of general circulation within the state or 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 board members at least 24 hours before the meeting. In addition, the notice shall describe how a member may participate in the meeting electronically or telephonically.

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

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

(ii) Votes by members of the board 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 Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah.

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

(ii) 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.

R651-103-4. Board and Council Emergency Meetings.

(1) There are times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Section 52-4-202(1) cannot be met. Pursuant to Section 52-4-202(5), the notice requirements in Section 52-4-202(1) may be disregarded when unforeseen circumstances require the board or any of the advisory councils to meet and consider matters of an emergency or urgent nature.

(2) 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 board of the proposed meeting and a majority of the convened members vote 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) Posting of the date, time, and place of the meeting and the topics to be considered:

(A) At the offices of the division;

(B) On the division's web page; and

(C) At the location where the emergency meeting will be held.

(ii) If members of the board appear electronically or telephonically, notice shall comply with the requirements of R651-103-3 to the extent practicable.

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

KEY: electronic meetings, procedures
May 22, 2018 **52-4-207**

R651. Natural Resources, Parks and Recreation.
R651-411. OHV Use in State Parks.
R651-411-1. Definitions.

(1) "OHV" for this section has the same meaning as defined in Subsection 41-22-2(13).

R651-411-2. OHV Use-Restrictions.

(1) OHVs are to be used only in designated areas.

(2) Designated ice areas for OHV use are only those ice areas that are accessed via the boat ramps to public ice fishing areas. These areas are at Bear Lake, East Canyon, Escalante, Hyrum, Jordanelle, Millsite, Otter Creek, Palisade, Piute, Red Fleet, Rockport, Scofield, Starvation, Steinaker and Yuba state parks.

(3) Responsibility for any accidents or problems while using OHVs in state parks rests with the user.

KEY: off-highway vehicles
February 16, 2017 41-22-10
Notice of Continuation December 19, 2018 79-4-501

R651. Natural Resources. Parks and Recreation.
R651-636. Procedures for Application to Receive Funds From the Zion National Park Restricted Account.
R651-636-1. Rulemaking Authority.

UCA, Section 63-11-67(6c), states that in accordance with Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, the division may make rules providing procedures and requirements for an organization to apply to the division to receive a distribution, under Subsection (5).

R651-636-2. Restricted Account.

This rule, as stated in H.B. 348, which enacted 63-11-17 Utah Code Annotated 1953, (2008 General Session), and that supports the Zion National Park Support Programs Restricted Account, provides procedures and process to obtain a special license, and indicates those who may be issued a special group license plate and the categories which apply.

R651-636-3. Application Process.

In order to receive funds from the Zions National Park Restricted Account, an applicant must be listed in a category found in Section 41-1a-422. The division shall receive and distribute voluntary contributions collected under Section 41-1a-422 in accordance with Section 63-11-67.

R651-636-4. Distribution Requests.

All distribution requests shall include the following documentation:

1. A signed and approved Zion National Park Donation Request form.

2. A signed copy of any agreement(s) and/or amendment(s) to agreements with Zions National Park.

3. In conjunction with Zions National Park and the Utah Department of Natural Resources (DNR), an audit review of each project may be requested and performed by DNR or Utah State Parks and Recreation staff.

R651-636-5. Application Review and Approval.

The Division of State Parks and Recreation will review and approve applications for disbursement of funds from the Restricted Account that is set up for receiving donations from those who are granted a Zion National Park Special Group License Plate.

KEY: parks
March 26, 2009 79-4-404
Notice of Continuation December 19, 2018 41-1a-422

R651. Natural Resources, Parks and Recreation.
R651-700. Administrative Procedures for Real Property Management.
R651-700-1. Authority.

These rules establish administrative procedures for real property under the management and/or ownership of the State of Utah, Division of Parks and Recreation ("State Parks") real property, as set forth in Utah Code Ann. Title 79, Chapter 4. State Parks, through the Parks Board, may establish rules for the acquisition, planning, protection, operation, maintenance, development, and wide use of scenic beauty, recreation utility, historic, archeological, or scientific interest, to the end that the health, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

R651-700-2. Purpose.

These rules are intended:

(1) To establish standards and procedures for acquisition, disposal, and exchange of Division lands consistent with law of the State of Utah.

(2) To provide procedure for granting of rights-of-way, easements and special use permits, and other non-recreational use of Division lands.

(3) To ensure consistency and efficiency of land management in order to maximize benefits to the Division and provide accountability to the citizens of Utah.

(4) To protect real property assets, which are fixed assets of the State of Utah, in compliance with applicable laws, rules and policies.

R651-700-3. Application.

These rules are applicable statewide for real property transactions but they shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R651-700-4. Definitions As Used in This Section.

(1) "Applicant" means any person applying for a Right-Of-Way (ROW), Easement, Lease, Special Use Lease, and Special Use Permit.

(2) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.

(3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.

(4) "Authorized Area" is the area of Division-owned land, which the Division allows a development to occupy, or person to use through a ROW, Easement, Lease , Special Use Lease, and Special Use Permit.

(5) "Board of Parks and Recreation" is the policy making body of the Division of State Parks and Recreation.

(6) "Communications Facility" means towers, antennas, dishes, buildings, and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross over of under State Parks to serve a communications facility shall be governed by the administrative rules for granting Easements as set forth in R651-700.

(7) "Department" means the Department of Natural Resources.

(8) "Development" means any structure built on State Parks land.

(9) "Director" is the agency head of the Division in whom ultimate legal authority is vested or their designee.

(10) "Division" is the Division of Parks and Recreation, also referred to as "State Parks", Division and State Parks may be used interchangeably, as appropriate.

(11) "Division Land" is land owned and/or managed by the Division or its agents.

(12) "Easement" means an interest in land owned by another party, entitling the holder of said interest to limited use of enjoyment of the others land.

(13) "Executive Director" means the executive Director of the Utah Department of Natural Resources.

(14) "Fair Market Rental Value" is the annual amount in cash a willing tenant would pay, and a willing landlord would charge for the same or similar lands for the highest and best use of the property.

(15) "Lands and Environmental Coordinator" is the Division employee responsible for real property planning, documentation, analysis, reports, agreements, databases, and coordination.

(16) "Lease" means an agreement that authorizes use of real property for a specific term and purpose, under specified conditions for a fee.

(17) "Paleontological Resources" means the remains or traces of organisms, plant or animal, which have been preserved by various means.

(18) "Park Manger" is the management official for one or more state parks.

(19) "Rights-of-Way (ROW) means the right or privilege, acquired through contract or other legally accepted means, to pass over a designated portion of the property of another.

(20) "Real Property" is land under water, upland, and all other property commonly or legally defined as real property (as set forth in Utah Code Ann. Section 79-4-203).

(21) "Real Property Asset" means the land surface, air above, and ground below, including all appurtenances to the land including buildings, structures, fixtures, fences and improvements erected on or attached to the same. Real property assets include any and all the interests, benefits, and rights inherent in the ownership of real estate.

(22) "Region" means a geographical grouping of state parks for management purposes. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.

(23) "Region Manager" is a manager of a geographic assemblage of state parks. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.

(24) "Resource Management Plan" is a plan prepared for the current and future management of a state park or recreational resource such as trails, boating safety, or off-highway vehicles.

(25) "Special Use Lease" is a written authorization issued by the Division to a person to use a specific area of Division Land for a special use under specific terms and conditions for a term of one (1) to fifteen (15) years.

(26) "State Park" means unique areas or real property in Utah set aside by the Utah State Government to preserve scenic beauty, recreational utility, historic, archeological, or scientific interest, to the end that the healthy, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

(27) "Special Use Permit" means a temporary authorization for a specific, non-depleting land use including but not limited to seismic or land surveys, research sites, or time-certain physical access o Division Lands. This contract vehicle is of a lesser order than a lease or Easement, is generally associated with a temporary event of short duration, and does not convey any proprietary or other rights or the use to the holder other than those specifically granted in the permit authorization.

(28) "Structure" means anything placed, constructed, or erected on Division Land.

R651-700-5. Obtaining an Opinion of Value.

(1) When acquiring, exchanging, or selling Division Lands

the Division may determine the value of real property utilizing any or all of the following methods:

(a) Broker's Estimate:

(b) Market Analysis, including but not limited to an appraisal, broker's estimate, market conditions analysis, and market demand analysis; and

(c) Appraisal.

(2) An Appraisal, Broker's Estimate, or Market Analysis may not be required if:

(a) Transactions involve water rights;

(b) Transactions involve federal lands or federal funding, where federal guidelines take precedence over the provisions of this rule;

(c) The market value of the subject property interest is less than One-Hundred Thousand Dollars ($100,000), as estimated by the Division;

(d) The asking price for the property interest is considerably below prevailing market conditions, as estimated by the Division;

(e) The asking price for the property interest is reasonable based upon prevailing market conditions, but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal or acquire a real estate broker's estimate of value prior to making an offer;

(f) An appraisal has been conducted on the subject property interest within the past twelve months;

(g) The subject property interest is being conveyed through an auction;

(h) The real property interest is a gift, contribution, or donation to the Division; or

(i) The real property interest is less-than-fee interest or not perpetual; or

(j) When the Director has determined by a written finding, that the cost of obtaining the appraisal is not justified, or in the best interest of the State of Utah.

(3) When values other than market value are considered in addition to or in place of an appraisal; or are considered in addition to, or in place of, an opinion of value rendered by a broker or sales agent; the Division shall create and keep a memo-to-file describing the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange.

R651-700-6. Land Acquisition.

(1) The Division may acquire real property through any and all legal means in order to fulfill its mission and legislative mandate.

(2) Acquisition of real property may be made by all legal and proper ;means, including purchase, gift, devise, eminent domain, lease, exchange, or otherwise, subject to the approval of the Director, Executive Director and the Governor of the State of Utah.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) Eminent domain acquisition shall be in the manner authorized by Utah Code Ann. Title 78B, Chapter 6, Part 5.

(5) The Division shall prepare an analysis of the proposed acquisition that provides the Director with the benefits of the acquisition to the Division, including an opinion as to whether or not the Division is the appropriate manager of the resource to be acquired.

(6) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(7) The Division shall make every effort to acquire subsurface mineral, water and any other rights attached to the land.

(8) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.

(9) Pursuant to Utah Code Ann Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.

(10) Proposed purchases of real property, or donations of such, shall be inspected on-site by a team consisting of the local park manager, region manager, Lands and Environmental Coordinator and others as designated by the Director.

(11) When acquiring lands the Division may determine the value of real property according to the policies contained in R651-700-5.

(12) A title report and/or land survey may be performed on all land acquisitions, at the discretion of the Director.

(13) After receiving the preliminary title report the Lands and Environmental Coordinator may request a review by the Attorney General's office.

(14) The closing of a real property transaction may be conducted at a title company. If a title company is used for closing, the Division shall instruct the company to record the deed, and after recording, send it to the Lands and Environmental Coordinator.

R651-700-7. Disposal of Real Property.

(1) The Division may dispose of real property in order to fulfill its mission and legislative mandate.

(2) Unless otherwise directed by the legislature, all land disposals shall be brought before the Parks Board for consultation, and shall have the final approval of the Director.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed sell as required by Utah Code Section 9-8-404.

(5) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.

(6) When selling real property the Division may determine a minimum selling price according to the policies contained in R651-700-5.

(7) Prior to completion of sale, lessees and permitees shall be notified an leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.

(8) The Division may sell real property to the public, upon approval of the Parks Board, through a competitive bid process to achieve the Division's goals.

(a) The Division may announce the sale of real property to the public by commercially feasible methods, to include publication in one or more newspapers of general circulation in the county in which the sale is proposed, at least 30 days or more in advance of the deadline for bid submittals.

(b) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information, which may create interest in the sell. The Division shall also identify the desired form of compensation, whether monetary, in-kind or both.

(c) Sealed bids shall be accepted no sooner than 14 days following the first sale notice. Competing bids shall be evaluated and the highest bid selected unless the highest bid does not meet the minimum value. In the case of a tie bid, the highest bidders shall be offered the opportunity to participate in

an oral bidding process.

(d) Once a successful bidder has been determined, a certificate of sale shall be prepared by the Lands and Environmental Coordinator and reviewed by the Assistant Attorney General assigned to represent the Division. A title company may provide the final closing arrangements, at the cost of the purchaser.

(e) The successful bidder shall pay the remaining balance at the time of closing and shall be responsible for all closing costs.

(f) When there are no successful bidders on the property, the unsold parcels may be:

(i) Listed with a realtor

(ii) Offer the property on a "first-come first-served" basis for a period of up to three years following the bid opening date; or

(iii) Auction the property.

R651-700-8. Land Exchanges.

(1) The Division may exchange real property in order to fulfill its mission and legislative mandate.

(2) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property through exchange, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) Pursuant to Utah Code Ann. Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.

(5) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed exchange as required by Utah Code Section 9-8-404.

(6) Prior to completion of exchanges, lessees and permitees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.

(7) When exchanging lands the Division may determine the value of real property according to the policies contained in R651-700-5.

(8) The criteria for exchange proposals are evaluated as follows:

(a) Real property owned by the Division may be exchanged for private and/or public properties of equal or greater recreation or monetary value in both acreage and monetary worth if the exchange shall benefit the Division's park system. The Division may exchange real property for other assets if the exchange benefits the park system.

(b) Verification shall be made that the exchange shall not result in an unmanageable and/or uneconomical parcel of Division Land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

(c) Proposed exchanges of real property shall be inspected on-site by a team consisting of the local Park Manager, Region Manager, Lands and Environmental Coordinator and others as designated by the Director.

(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(e) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.

(f) The Division, at is discretion, may at any time cancel any and all negotiations for a land exchange.

(9) If the Division is offered a land exchange, an application shall be filed with the Division, and evaluated by the Division with the follow additional criteria:

(a) A completed application form shall be submitted with an application-processing fee established by the Division.

(b) Incomplete applications may be denied and the application fee forfeited to the Division.

The Applicant shall provide a property description, preferably a metes and bounds survey, a county plat map of all properties to be considered for the exchange. A map shall be provided indicating the relationship of the properties to Division Land.

(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(e) Other essential information required by the Lands and Environmental Coordinator and/or the Division.

(f) Upon receipt of an exchange application, the Division may solicit competing exchange property or assets. Competing applications may be solicited through publication, at least once a week for three consecutive weeks, in one or more newspapers of general circulation in the county in which the park is located. The Division may allow all applicants at least 20 days from the date of mailing of notice to submit a sealed bid containing their proposal for the subject parcel.

(g) The Director may approve or disapprove any exchanges based on information solicited through the application process. The Director may also waive the application for good cause.

(h) If competing proposals are received, the Division shall choose the successful applicant by evaluating each proposal for its contribution toward attainment of Division management objectives.

(i) The successful applicant may be charged an amount equal to all appraisal, appraisal reviews, advertisement, staff time, and other costs to the Division. The Director, for good cause shown by the applicant, may waive such costs.

R651-700-9. Right-Of-Way (ROW), Easements, Special Use Leases, and/or Special Use Permit.

(1) The Division may enter into real property transactions in order to fulfill its mission and legislative mandate.

(2) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(3) Potential applicants for ROW, Easements, Special Use Lease, Special Use Permit may contact the park manager or regional manager prior to making a formal application to the Lands and Environmental Coordinator.

(4) To apply for a ROW, Easement, Special Use Lease a person shall:

(a) Complete and submit an application provided by the Division to the Lands and Environmental Coordinator, unless it is an application for a Special Use Permit, in which case it shall be submitted to the appropriate park manager;

(b) Pay a non-refundable application fee;

(c) If for the purpose of construction or occupancy, submit the application and application fee at least 120 days prior to the proposed construction or occupancy date, unless otherwise specified by rule;

(d) Provide a map, aerial photograph, or other guide to the project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.

(i) Anyone desiring to perform a survey on Division Land with the intent of filing an application for an ROW, Easement or Special Use Lease shall prior to entry for surveying activities,

file with the agency an application for a Special Use Permit. The permit shall include a description of the proposed survey project, including the purpose, general location, and potential resource disturbances of the proposed survey. The appropriate park manager or his delegate shall review the application.

(e) Provide evidence of an ownership or leasehold interest in the estate where development of that estate is the purpose for applicants seeking a ROW or Easement.

(f) Include a project plan with the following information:

(i) Project alternatives, including alternatives not affecting the Division;

(ii) Project alternatives not affecting Division Land which were considered but rejected, and the specific reasons those alternatives were rejected;

(iii) A description of the proposed activity, structures, and/or infrastructure, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. the description shall be sufficiently detailed as to provide an accurate and complete representation of the proposed actions;

(iv) Identification of adverse impacts to public recreation and scenic values associated with the proposed use and how they shall be avoided, minimized, or mitigated;

(v) Other essential information required by the Lands and Environmental Coordinator and/or the Division.

(5) Upon receiving the application, application fee, and the information required in Subsection (4) above, the Lands and Environmental Coordinator may either deny the application or grant a conditional approval within 60 days.

(6) If the application is denied, the Lands and Environmental Coordinator shall provide a written notice to the applicant.

(7) Before final approval is granted the Division may require the applicant to provide the following additional information:

(a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline survey describing the proposed ROW and its width is adequate for a pipeline, road, power line, or similar use.

(b) An electronic file depicting the Easement, ROW or Special Use Lease Area that is compatible with, and requires no editing fork accurate downloading into geographic systems information software used by the Division.

(c) Evidence that the applicant had given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.

(d) An impact assessment analyzing the potential direct, indirect, and cumulative effects the proposed project may have on public recreation opportunities, scenic values, wildlife, and wildlife habitat.

(e) A survey of threatened, endangered and candidate plant and animal species. Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.

(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal and local laws.

(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

(h) A survey of the project to determine if wetlands shall be impacted. The project applicant is responsible for obtaining all federal Clean Water Act Section 404 permits. If wetlands are found, the applicant must provide sufficient mitigation to offset any damage to the wetland area.

R651-700-10. Division Assessment of the Applications for ROWs, Easements, and Special Use Leases.

(1) Upon receipt of an application for a ROW, Easement or Special Use Lease, the Division shall determine;

(a) If the application is complete;

(b) If the subject area is available for the requested use; and

(c) The method to be used to determine the amount of compensation payable to the Division.

(2) The Division shall then advise the applicant of its determination concerning each of the three factors in Section (1). Applications determined by the Division to be incomplete, or for an area in which the use would be incompatible shall be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If an application rejected for incompleteness is resubmitted within ninety (90) calendar days for the date the Division returned it to the applicant (as determined by the date of postmark), no additional application fee will be assessed.

(4) The Division may reject applications for ROWs or Easements that would be more appropriately authorized by a Special Use Lease.

(5) Upon acceptance by the Division, the application may be circulated to various local, state, and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permitees, and Easement holders for review and comment. As part of this review, the Division shall specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species) And archaeological and historic resources within the requested area that may be disturbed by the proposed use;

(b) Conformance of the proposed use with other local, state, and federal laws and rules;

(c) Conformance of the proposed use with a state park comprehensive land use plan, resource management plan, operation plan, business plan, and/or zoning ordinances;

(d) Conformance with existing state park rules, policies, and guidelines;

(e) Potential conflicts of the proposed use with existing leases, permits or Easement holders.

(6) If the application is for a communications facility, the Division may request comments from the Federal Communications Commission, Public Utility Commission, and any other person's owning/leasing communications facilities that advise the Division that they want to receive such applications.

(7) After receipt of agency and public comment concerning the proposed use, the Division shall advise the applicant in writing:

(a) If changes in the use or the requested lease or permit area are necessary to respond to agency or public comment;

(b) If additional information is required from the applicant, including but not limited to a survey of:

(i) State or federal listed threatened and endangered species (including candidate species) within the requested area;

(ii) Archeological and historic resources within the requested area; and/or

(iii) Wetlands.

(c) In the case of a Special Use Lease, if the area requested for lease will be authorized for use by the applicant through a Special Use Lease, or be made available to the public through competitive bidding pursuant to R651-700-12.

R651-700-11. Compensation for ROW, Easements, Leases and Special Use Leases.

(1) In establishing the amount of annual compensation, or minimum bid at auction, the Division shall:

(a) Adhere to the policies contained in R651-700-5 of these rules;

(b) Whenever practicable, base the amount of annual compensation on the fair market rental value received by property owners for similar property used in a similar manner;

(c) Require the holder of a Special Use Lease for a communications facility to annually remit to the Division both;

(i) The full amount of the base annual compensation required by their lease, and

(ii) A payment, the amount to be determined by the Division on a case-by-case basis, of the rental received by the lessee during the previous calendar year from the sublessees using the subject facility authorized by the lease.

(d) In the event that reliable data concerning fair market rental value are not available, the Division shall select another method of determining the amount of annual compensation, or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop value, or percent of product produced.

(e) Rents for ROW, Easements, and leases are based on the costs incurred by the Division and fair market value. Fees are based on the current fee schedule that can be obtained from the Lands and Environmental Coordinator.

R651-700-12. Competitive Bidding Process for Special Use Leases.

(1) The Division shall determine on a case-by-case basis if an area requested for a Special Use Lease shall be offered to the public through competitive bidding. This decision shall be made after considering:

(a) Whether the area requested for a Special Use Lease or permit is Division Land;

(b) The nature of the use and length of authorization requested;

(c) The availability of reliable data regarding the fair market rental value of the subject parcel for the proposed use; and

(d) Whether other applications are received by the Division to use the same area requested for the same or competing uses.

(2) If the Division determines that the greatest benefit to the public recreation and/or the Division would be achieved by offering the subject area through competitive bidding, it shall give Notice of Leasehold Availability and provide an opportunity for applications to be submitted.

(3) The Notice of Leasehold Availability shall state;

(a) The location and size of the subject area;

(b) The user(s) approved by the Division for the subject area;

(c) The type of auction and minimum acceptable bid amount;

(d) What developments, if annex on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the Division; and

(e) The deadline for submitting a completed application to the Division.

(4) The Notice of Leasehold Availability shall be:

(a) Published at the applicant's expense not less than once each week for two (2) successive weeks in a newspaper of general circulation in the county(ies) in which the subject parcel is located;

(b) Posted on the Division Internet website; and

(c) Sent to persons indicating an interest in the subject parcel.

(5) The highest qualified bidder shall be awarded the lease at auction subject to satisfaction of the requirements of R651-700- (9 and 10) of these rules. The Division, however, shall have th right to reject any and all bids submitted.

R651-700-13. Right-Of-Way (ROW), Easements, Special Use Leases - Final Determination.

(1) The Director may deny any application if:

(a) The application does not include all the information required;

(b) The potential impact to public recreation, cultural/historic resources, view shed, wildlife habitat, or water quality is unacceptable;

(c) The proposed project contravenes the Recreation Management Plan or site master plan;

(d) The applicant has not, in the opinion of the Division, adequately considered ways to avoid or minimize impacts or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts;

(e) There are, in the opinion of the Division, alternative locations reasonably available on lands not owned by the Division for the requested use including organized events that may harm public recreation, wildlife, wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails;

(f) The application's project affects property in which a third party has contractual or legal oversight rights and the project is rejected by that party; or

(g) The applicant is in default on any previous obligation to the Division.

(2) If the application is rejected, the Division shall provide a written notice to the applicant.

(3) A ROW, Easement or Special Use Lease may include provisions requiring the applicant to:

(a) Restore all structures, including but not limited to fences, roads, and existing facilities, and regard as nearly as practical to the pre-project grade and contour, and re-vegetate the impacted area to Division specifications;

(b) Adhere to the terms of the applicant's approved project plan prescribed in subsection R651-700-9(4)(f);

(c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, re-vegetation, compensatory mitigation and all other expenses associated with the project; and

(d) Provide all permits and clearances for the project.

(4) Prior to the issuance of an Easement, ROW, Special Use Permit or Special Use Lease or for good cause shown at any time during the term of the agreement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the Easement, ROW, Special Use Permit or Special Use Lease.

(5) Easements, ROW, Special Use Permits and Special Use Leases issued by the Division shall be on a form supplied by the Division that has been approved for legal sufficiency.

(6) If the Division decides to issue a ROW, Easement, or Special Use Lease to the applicant without competitive bidding, the written notice will also indicate;

(a) The amount of compensation that the applicant shall remit to the Division to obtain authorization;

(b) Any insurance and/or surety bond required by the Division pursuant to the requirements of R651-700-16; and

(c) A draft copy of the ROW, Easement, or Special Use Lease.

(7) The Division shall not grant an Easement, ROW, Special Use Permit or Special Use Lease to the applicant until it has received all fees and compensation specified in these rules, and evidence of any required insurance and/or surety bond.

(8) The Director may refer any applications for a Special Use Lease to the Parks Board for review and approval.

R651-700-15. Easement, ROW, Special Use Permit or Special Use Lease - General Terms and Conditions.

(1) A ROW or Easement may be granted for a maximum of thirty (30) years from the date of the signing. The Division may grant such real property interests for shorter time periods. The Director may provide an exception, in whole or in part, to the rules for use of Division land and other recreational areas for an Easement, ROW, Special Use Permit, or Special Use Lease granted pursuant to this section. The exception may be provided by a written decision issued by the Director and shall be effective for the term or such lesser period of time specified by the Director.

(2) The term of a Special Use Lease shall not exceed fifteen (15) years. The Division shall determine the length of a special use lease based on the nature of the use intended for the requested site. The Division may, at its discretion, provide as a provision of the lease that it may be renewed for a term to be determined by the Division.

(3) The term of a Special Use Permit shall not exceed one (1) year. A Special Use Permit may, at the discretion of the Division, be renewed up to two (2) times for a maximum term of ninety (90) days each time.

(4) Special Use Leases and Special Use Permits shall be offered by the Division for the minimum amount of area determined by the Division to be required for the requested use.

(5) The lessee or permittee may request the Division to close all or potions of the authorized area to public entry or restrict recreational use by the public to protect the persons, property, and/or crops from harm.

(6) The Division or its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious weed or pest abatement, or for wildfire control.

(7) The lessee, grantee or permittee shall dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waterway.

(8) A lessee, grantee or permittee may not interfere with lawful public use of an authorized area, or obstruct free transit across Division Land , or intimidate or otherwise threaten or harm public users of Division Land.

(9) Upon the expiration or termination of a ROW, Easement, Special Use Lease or Permit, the holder shall remove any or all developments as directed by the Division within sixty (60) calendar days of the date of termination of the Easement, ROW, lease or permit. Any developments remaining on the area authorized by the Easement, Row, lease or permit after the sixty (60) day period shall become the property of the Division. If the grantee, lessee or permittee refuse to remove the subject developments, the Division may remove them and charge the grantee, lessee or permittee for doing so.

(10) The holder of a Special Use Lease or permit shall not allow any other use to be made of, or occur on the site or vicinity that is not specifically authorized:

(a) By that lease or permit; or

(b) By the Division in writing prior to the use.

R651-700-16. Insurance and Bond - Easement, ROW, Special Use Lease, Special Use Permit.

(1) The Division may require a grantee, lessee or permittee to obtain insurance in a specified amount if the use, in the opinion of the Division, constitutes a risk to public safety, or to the State of Utah.

(2) The Division may request that the applicant, grantee, lessee or permittee provide information concerning the use of the area to the Risk Management, which may assist the Division in determining the appropriate amount of insurance coverage based on the nature of the use.

(3) All bonds posted on Easements, leases, ROW, or permits may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the Easement, and rules pertaining to the Easement. The bond shall be in effect even if the grantee has conveyed all or part of the Easement interest to a sub lessee, assignee, or subsequent operator until the grantee fully satisfies the Easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

(4) Bonds may be increased in reasonable amounts, at any time as the Division may decide, provided grantor first gives grantee 30 days written notice stating the increase and the reasons(s) for the increase.

(5) Bonds may be accepted in any of the following forms at the discretion of the Division:

(a) Surety bond with an approved corporate surety registered in Utah;

(b) Cash deposit. However, the Division shall not be responsible for any investment returns on cash deposits;

(c) Certificate of deposit in the name of "The Division of State Parks and Recreation and applicant, c/o Applicant's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the grantee shall be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the applicant prior to acceptance by the Director; or

(d) Other forms of surety as may be acceptable to the Division.

R651-700-17. Assignment of ROW, Easement, Special Use Leases and Special Use Permits, Subleasing.

(1) A ROW, Easement or Special Use Lease in good standing is freely assignable.

(2) Special Use Permits are non-assignable.

(3) To assign a ROW, Easement or Special Use Lease, the lessee shall submit a:

(a) Notice of proposed assignment on a form provided by the Division; and

(b) Non-refundable assignment processing fee payable to the Division.

(4) The Division shall make every effort to complete its review of such proposed assignments within thirty (30) calendar days of receipt of the notice. The Division may request additional information concerning the proposed assignment.

(5) A sublease or assignment may be made only to a person, firm, association, or corporation qualified to do business in the State of Utah, and which is not in default under the laws of the State of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the Division.

(6) A lessee wanting to offer a sublease to another person shall:

(a) Obtain prior written authorization from the Division by applying to the Division on a form provided by the Division, and

(b) Submit to the Division rent, in an amount to be determined by the Division on a case-by-case basis, at the end of the calendar year.

(7) A sublease or assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee/lessee, any conditions in the assignment to the contrary not withstanding.

(8) A sublease or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should be clearly set forth the lease or contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party.

A copy of the documents subleasing or assigning the interest shall be given to the Division.

(9) A sublease or assignment shall be executed according to Division procedures.

(10) A sublease or assignment is not effective until approved by the Division.

R651-700-18. ROW, Easement, Special Use Leases and Special Use Permits - Unauthorized Uses and Penalties.

(1) Uses and developments subject to, but not authorized by a ROW, Easement, Special Use Lease or Special Use Permit issued by the Division constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.

(2) In addition to any other penalties provided or permitted by law, the placement of ay development on, or use of Division Land without the required Division authorization as described in these rules, or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.

R651-700-19. Termination of a Special Use Lease or Special Use Permit for Default.

(1) If the lessee or permittee fails to comply with these rules or other lease terms and conditions, or otherwise violates laws covering the use of his/her authorized area, the Division shall notify the lessee or permitees in writing of the default and demand correction within a specified time frame.

(2) If the lessee or permittee fails to correct the default within the time frame specified, the Division may:

(a) Modify or terminate the lease or permit, and/or

(b) Request the Attorney General to take appropriate legal action against the lessee or permittee.

R651-700-20. Abandonment or ROW, Easement, or Lease.

(1) If within 365 days of the date of execution of a ROW, Easement or lease a grantee/lessee fails to construct and install the infrastructure which necessitate the grantee/lessee's acquisition of a ROW, Easement or lease, or the grantee/lessee otherwise fails to use all of any portion of a ROW, Easement or lease, that portion of the ROW, Easement or lease so unused shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW or lease shall be terminated with no compensation due from the Division.

(2) If proof of grantee/lessee's use of all or portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease shall be terminated with no compensation due from the Division.

R651-700-21. ROW, Easement, Special Use Leases and Special Use Permits - Reconsideration of Decision.

(1) An applicant or any other person adversely affected by the issuance of denial may request that the Director or the parks Board, depending upon which entity made the decision, reconsider the decision:

(a) Such a request shall be received by the Director no later than thirty (30) calendar days after the date of delivery of the decision.

(b) If the Director made the decision of concern, she/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(c) If the decision was made by the parks Board, the Director may recommend to the parks Board either that the Special Use Lease or permit issuance or denial be modified based on the merits of the request.

R651-700-22. Water Rights.

(1) It is the policy of the Division of Parks and Recreation to use its water resources for beneficial purposes in support of public recreation, including but not limited to, protecting scenic attractions and recreational values for the present and future citizens of Utah.

KEY: property

October 27, 2009	**79-4**
Notice of Continuation December 19, 2018	**79-4-203**
	79-4-203.5(a)

R655. Natural Resources, Water Rights.
R655-13. Stream Alteration.
R655-13-1. Authority.

(1) The following rule is established under the authority of Section 73-3-29. Additional procedures may be required to comply with other governing state statute, federal law, federal regulation, or local ordinance.

R655-13-2. Purpose.

(1) The purpose of this rule is to clarify the procedures necessary to obtain approval by the state engineer for any project that proposes to alter a natural stream within the state of Utah. Approval does not grant access, authorize trespass, or supercede property rights.

R655-13-3. Applicability.

(1) These rules apply to all stream alteration projects within the state of Utah.

R655-13-4. Definitions.

(1) Alteration: To obstruct, diminish, enhance, destroy, alter, modify, relocate, realign, change, or potentially affect the existing condition or shape of a channel, or to change the path or characteristics of water flow within a natural channel. It includes processes and results of removal or placement of material or structures within the jurisdiction delineated in this rule.

(2) Bankfull discharge: The flow corresponding to the elevation of the water surface, in a natural stream, where overflowing onto the floodplain normally begins.

(3) Bank(s): The confining sides of a natural stream channel, including the adjacent complex that provides stability, erosion resistance, aquatic habitat, or flood capacity.

(4) Bed: The bottom of a natural stream channel.

(5) Canopy: Mature riparian woody vegetation, usually referring to limb and leaf overhang.

(6) Channel: The bed and banks of a natural stream.

(7) Clearance: The vertical distance between a given water surface and the lowest point on any structure crossing a natural channel.

(8) Ecology: A branch of science concerned with the interrelationship of organisms and their environment.

(9) Ecosystem: The assemblage of organisms and their environment functioning as an ecological unit in nature.

(10) Floodplain: The maximum area that will accommodate water when flow exceeds bankfull discharge.

(11) Flowline: The lowest part of a streambed when viewed in cross-section.

(12) Fluvial: 1: Of, relating to, or living in a stream or river. 2: Produced by stream action.

(13) Gradient: Elevation change per unit length.

(14) Natural stream: Any waterway, along with its fluvial system, that receives sufficient water to sustain an ecosystem that distinguishes it from the surrounding upland environment.

(15) Reference reach: A portion or segment of a natural stream channel that shows little or no indication of alteration.

(16) Revegetation: The planting of salvaged plants, containerized plants, cuttings, seeds, or other methods to produce a desired plant community.

(17) Riparian corridor: The vegetation zone associated with a natural stream environment.

(18) Riprap: Preferably hard, well-graded, angular rock, sufficient in size and density to remain stationary during high flows.

(19) State Engineer: Director of the Division of Water Rights.

(20) Waterway: A topographic low that collects and conveys water.

R655-13-5. Jurisdiction.

(1) For the purposes of determining the need to obtain an approved stream alteration application, it is necessary to review the criteria outlined in Section 73-3-29(4)(a). The items, and thus the adopted jurisdictional limits, must be investigated by the state engineer before making a determination on a proposed stream alteration. The state engineer shall conduct investigations that may be reasonably necessary to determine whether the proposed alteration will:

(a) impair vested water rights. In order to determine if vested water rights could be impaired, it is necessary to determine if: stream flows are being modified; the geometry of the bankfull channel will change; or the proposal will have any effect on the diversion, collection, or distribution appurtenances associated with the water right within the jurisdictional limits presented in sections R655-13-5(1)(b) below. In evaluating a proposed stream alteration, the state engineer must consider the proposal's impact on any diversion, collection or distribution structure associated with the water right. By necessity, the jurisdictional limit must be evaluated on a case-by-case basis and must assess those appurtenances to the actual diversion structure which could be affected even though they are located outside of the channel.

(b) unreasonably or unnecessarily affect any recreational use or the natural stream environment. The natural stream environment consists of the stream, the conveyed water, the adjoining vegetative complex, and the habitat provided by the abutting riparian zone. Evaluation of impacts to recreational use must factor in the hydrology of the stream, manmade structures detrimental to recreational use and the riparian zone's ability to keep the system erosion resistant. The jurisdictional limit to be used to evaluate the impacts on recreational use and the natural stream environment will be the greater of the two as follows:

(i) The observed riparian zone or canopy drip line of a undisturbed reference reach; or

(ii) Two times the bankfull width from the bankfull edge of water in a direction perpendicular to the flow and away from the channel up to a maximum of 30 feet.

(c) unreasonably or unnecessarily endanger aquatic wildlife. Any changes made to a natural stream that affect the geometry, water quality, flows, temperature, and vegetative cover may endanger aquatic wildlife. The jurisdictional limit, when considering the impacts to aquatic wildlife, is taken to be contained within the limit established under R655-13-5(1)(b).

(d) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows. Changes in cross-sectional geometry, grade, surface roughness, sediment load, in-stream structures, levees, and floodplain development, can have an influence on a channel's ability to conduct high flows. The objective in evaluating a stream's ability to conduct high flows is not to attempt to provide a certain level of protection (i.e. 100 year event), but rather to make sure that the losses in the natural stream's carrying capacity are minimized. It is important to recognize that the hydraulic capability of a natural stream, at a section on the stream, is a three dimensional issue and alterations at a point can change the carrying capacity of the stream both upstream and downstream of the actual stream alteration. The jurisdictional area, when considering the channel's hydraulic capacity, must include the bankfull stream channel and in many cases portions of the floodplain which have been observed conducting or storing water during high flow events or show physical evidence of conducting or storing water during high flows.

(2) Any work proposed in any of the preceding identified jurisdictional limits will require an approved stream alteration application.

R655-13-6. Application Requirements.

(1) Blank application forms are available through the Division of Water Rights or on the Division of Water Rights website. In addition to the information requested on the application, the following information shall be submitted with the application, if applicable:

(a) A rehabilitation plan for areas disturbed during construction activities;

(b) Hydraulic calculations on which the design of the proposed alteration is based;

(c) A description of the construction methods to be employed; and

(d) Any other information the state engineer determines is necessary to evaluate the proposal.

(2) Incomplete applications will be returned to the applicant.

R655-13-7. Specific Stream Alteration Activities.

(1) The following subsections address specific types of stream alteration activities and the nature of special information that shall be provided to the state engineer. These subsections are not intended to be comprehensive and other requirements may be imposed at the discretion of the state engineer.

(a) Applications that propose to install a utility (sewer, water, fiber-optic cable, etc.) beneath a natural stream will be subject to the following conditions and requirements:

(i) Applicants will be required to explore the utilization of directional drilling or jacking methods where year-round flows exist. Where directional drilling or jacking in not feasible, the applicant will be required to submit detailed plans showing how flow will be diverted away from the area during construction (use of coffer dams, temporary culverts, etc.) and how the channel will be rehabilitated to it pre-alteration state following installation of the utility.

(ii) Bedding and backfill material placed over and around the utility shall not be more free-draining than the adjacent bed, bank, and riparian area materials and shall be compacted to in-place densities at least as great as those of similar adjacent materials. In some circumstances, cutoff collars may be required.

(iii) Utility crossings under natural streams shall be placed with the top of the utility a minimum of three (3) feet below the existing natural elevation of the streambed. In some instances, a greater depth may be required if there is significant evidence of on-going erosion.

(iv) Where utility crossings occur on river bends or areas of significant on-going bank erosion, the utility shall be kept at an elevation below that of the bed of the stream, laterally away from the stream, to a distance where erosion will not expose the utility at a later date.

(b) Applications that propose to span natural streams by way of bridges or other structures will be subject to the following conditions and requirements:

(i) Submission of consideration for the use of existing stream crossings as an alternative to construction of a new bridge or span.

(ii) Construction of the bridge abutments shall not encroach on the bankfull stage of a natural stream.

(iii) Clearance of the lowest part of the span shall be a minimum of three (3) feet above bankfull stage unless specifically exempted by the state engineer.

(c) Applications that propose installation of a culvert or other similar structure will be subject to the following conditions and requirements:

(i) The applicant shall submit evidence to justify the infeasibility of constructing a bridge crossing.

(ii) The grade and elevation of the bottom (or floor) of the culvert shall not change the profile from that of the original undisturbed streambed, unless the culvert is intended to be used as a fish barrier.

(iii) The bottom of the culvert should contain natural streambed material if the natural stream contains a fishery. This may require installing the culvert flowline below the bed of the channel or installation of an open bottom culvert.

(iv) The culvert shall be sized to allow passage of flood flows and in some cases wildlife migration.

(v) The culvert design should include energy dissipation structures or devices when necessary.

(d) Applications that propose to remove or thin-out living or dead riparian vegetation will be considered if:

(i) the existing riparian vegetation consists exclusively or predominantly of non-native plant and tree species, provided that removal or thinning will not jeopardize the stability of the stream or impact wildlife habitat; or

(ii) the existing vegetation represents a flood threat to existing buildings or other permanent structures, residential areas, transportation routes , or established utilities.

(e) Dead vegetation within the channel may be removed without written authorization by the state engineer provided that removal can be accomplished by way of manual methods.

(f) Applications that propose to discharge storm water or waste water into a natural stream channel shall include plans for treating the water prior to discharge (debris box, skimmer, or other appropriate method for removing debris or any other pollutant or constituent which will impair the ecosystem health of the receiving channel) when water originates from areas containing potential waste or contaminants. Debris boxes shall be cleaned or otherwise serviced regularly. Outfall structure design shall include methods for reducing water velocities and preventing erosion (keyed-in riprap, flared end-section, baffles, etc).

(g) Applications that propose to relocate a natural stream channel will be considered if:

(i) the existing channel is degraded or impaired and relocating the channel will enhance the natural stream environment; or

(ii) the existing channel location represents a significant hazard to existing permanent structures, residential areas, transportation routes, or established utilities; and other bank stabilization methods can be shown to be inappropriate or infeasible for reducing or eliminating the hazard.

(h) Applicants that propose to relocate a natural stream will be required to submit detailed drawings of the new channel (plan, cross-section(s), and profile views) and vegetation plans for the channel and surrounding area. Monitoring of planted vegetation must be conducted and results reported to the Division of Water Rights.

(i) Applications that propose to remove beaver dams will be considered if:

(i) the dam(s) interferes with the operation or maintenance or threaten the integrity of a bridge, culvert, an authorized man-made dam, or authorized water diversion works; or

(ii) the presence of the dam(s) causes or may reasonably be expected to cause flooding of pre-existing developed areas, buildings, transportation routes, or established utilities; or

(iii) the dam(s) exists in areas of highly erosive soil or recently authorized stream restoration activities; or

(iv) the presence of the dam(s) represents a detriment to fish management.

(j) Removal of established beaver dams for the sole purpose of obtaining impounded water to supplement other water sources will be reviewed critically.

KEY: stream alterations
May 4, 2004 **73-3-29**
Notice of Continuation December 7, 2018

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Daily limit" means the maximum limit, in number or amount, of protected aquatic wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including corn, worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Permanent residence" means, for the purposes of this rule only, the domicile an individual claims pursuant to Utah Code 23-13-2(13).

(y) "Possession limit" means, for purposes of this rule only, two daily limits, including fish in a cooler, camper, tent, freezer, livewell or any other place of storage, excluding fish stored in an individual's permanent residence.

(z) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(aa) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(hh)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(ii) "Underwater spearfishing" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other device to propel a pointed shaft to take fish from under the surface of the water.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, a

Saturday in June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full daily and possession limit.

R657-13-4. Fishing Contests.

All fishing contests shall be held pursuant to R657-58 Fishing Contests and Clinics.

R657-13-5. Interstate Waters and Reciprocal Fishing Permits.

(1) When fishing interstate waters, an individual must:

(a) obtain the necessary fishing licenses and permits, as provided below; and

(b) comply with angling regulations applicable to the state where they are fishing.

(2) Bear Lake.

(a) A person possessing a valid Utah or Idaho fishing or combination license, whether resident or nonresident, may fish both the Utah and Idaho portions of the Lake in accordance with the angling regulations applicable to the state where they are fishing.

(b) Only one daily limit may be taken in a single day, even if licensed in both states.

(3) Lake Powell Reservoir.

(a) A person possessing a valid Utah or Arizona fishing or combination license, whether resident or nonresident, may fish both the Utah and Arizona portions of the Reservoir in accordance with the angling regulations applicable to the state where they are fishing.

(b) Only one daily limit may be taken in a single day, even if licensed in both states.

(4) Flaming Gorge Reservoir.

(a) A Utah resident possessing a valid Utah fishing or combination license and a Wyoming reciprocal fishing permit for Flaming Gorge Reservoir may fish the Wyoming portions of the Reservoir as prescribed in Wyoming angling regulations.

(i) Utah residents may obtain reciprocal fishing permits for Flaming Gorge Reservoir by contacting the Wyoming Game and Fish Department.

(b) A person possessing a valid, resident or nonresident, Wyoming fishing or combination license and a Utah reciprocal fishing permit for Flaming Gorge Reservoir may fish the Utah portions of the Reservoir as prescribed in Utah angling regulations.

(i) A Utah reciprocal fishing permit for Flaming Gorge Reservoir may be obtained through the division's web site, authorized license agents, or regional offices.

(ii) The Utah reciprocal fishing permit must be:

(A) used in conjunction with a valid, Resident or nonresident Wyoming fishing or combination license; and

(B) signed by the holder as the holder's name appears on the Wyoming fishing or combination license.

(c) A Utah reciprocal fishing permit is valid for 365 days from the date of purchase.

(d) Only one daily limit may be taken in a single day even if licensed in both states.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than two lines is unlawful, except:

(a) while fishing for crayfish without the use of fish hooks as provided in R657-13-15; or

(b) while fishing through the ice at Flaming Gorge Reservoir as provided in R657-13-7.

(3) No artificial lure may have more than three hooks. (4) No line may have attached to it more than three baited hooks, three artificial flies, or three artificial lures, except for a setline.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With More than One Pole.

(1) A person may use up to two fishing poles to take fish on all waters open to fishing, provided they possess an unexpired fishing or combination license, except as provided in Subsection (2) below.

(2) A person may use up to six lines when fishing at Flaming Gorge Reservoir through the ice. When using more than one line at Flaming Gorge Reservoir, the angler's name shall be attached to each line, pole, or tip-up, and the angler shall check only their lines.

(3) Regardless of the number of poles or lines used, an angler may not take more than one daily limit or possess more than one possession limit. (4) When fishing on waters located within another state, a person must abide by that state's regulations regarding fishing with more than one pole.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2) A person may use up to two lines for angling while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to any valid Utah fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with any unexpired Utah fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

R657-13-9. Underwater Spearfishing.

(1) A person possessing a valid Utah fishing or combination license may engage in underwater spearfishing, only as provided in this Section.

(2) The following waters are open to underwater spearfishing from January 1 through December 31 for all species of game fish, unless specified otherwise by individual water:

(a) Big Sand Wash Reservoir (Duchesne County);

(b) Brown's Draw Reservoir (Duchesne County);

(c) Causey Reservoir (Weber County);

(d) Deer Creek Reservoir (Wasatch County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(e) East Canyon Reservoir (Morgan County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(f) Echo Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(g) Electric Lake (Emery County);

(h) Fish Lake (Sevier County), except underwater

spearfishing for any game fish is closed from September 16 to the first Saturday in June the following year;

(i) Flaming Gorge Reservoir (Daggett County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(j) Grantsville Reservoir (Tooele County);

(k) Ken's Lake (San Juan County);

(l) Lake Powell (Garfield, Kane and San Juan Counties), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(m) Newcastle Reservoir (Iron County), except underwater spearfishing is closed for all species of game fish other than wipers and rainbow trout;

(n) Pineview Reservoir (Weber County), except underwater spearfishing is closed for:

(i) largemouth and small mouth bass from April 1 through the fourth Saturday in June; and

(ii) tiger musky year round.

(o) Porcupine Reservoir (Cache County);

(p) Recapture Reservoir (San Juan County);

(q) Red Fleet Reservoir (Uintah County);

(r) Rockport Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(s) Sand Lake (Uintah County);

(t) Smith-Moorehouse Reservoir (Summit County);

(u) Starvation Reservoir (Duchesne County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(v) Steinaker Reservoir (Uintah County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(w) Willard Bay Reservoir (Box Elder County); and

(x) Yuba Reservoir (Juab and Sanpete Counties).

(3) Nongame fish, excluding prohibited species listed in Section R657-13-13, may be taken by underwater spearfishing:

(a) in the waters listed in Subsection (2) and at Blue Lake (Tooele County) for tilapia and pacu only; and

(b) during the open angling season set for a given body of water.

(4) The waters listed in Subsections (2) and (3)(a) are the only waters open to underwater spearfishing for game or nongame fish, except carp may be taken by means of underwater spearfishing from any water open to angling during the open angling season set for a given body of water.

(5)(a) Underwater spearfishing is permitted from official sunrise to official sunset only, except burbot may be taken by underwater spearfishing at Flaming Gorge Reservoir (Daggett County) between official sunset and official sunrise.

(b) No other species of fish may be taken with underwater spearfishing techniques at Flaming Gorge Reservoir or any other water in the state between official sunset and official sunrise.

(6)(a) Use of artificial light is unlawful while engaged in underwater spearfishing, except artificial light may be used when underwater spearfishing for burbot at Flaming Gorge Reservoir (Daggett County).

(b) Artificial light may not be used when underwater spearfishing for fish species other than burbot at Flaming Gorge Reservoir.

(7) Free shafting is prohibited while engaged in underwater spearfishing.

(8) The daily limit and possession limit for underwater spearfishing is the same as the daily limit and possession limit applied to anglers using other techniques in the waters listed in Subsections (2) and (3)(a), and as identified in the annual Utah Fishing Guidebook issued by the Utah Wildlife Board.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted while angling, except when underwater spearfishing. However artificial light is permitted while underwater spearfishing for burbot in Flaming Gorge or while fishing for carp with a bow, crossbow, or spear statewide.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(2) and Section R657-13-20.

(3)(a) A person may not possess a gaff while angling, or take protected aquatic wildlife by snagging or gaffing, except:

(i) a gaff may be used at Lake Powell to land striped bass; and

(ii) snagging may be used at Bear Lake to take Bonneville cisco.

(b) Except as provided in Subsection (3)(a)(ii) and Section R657-13-21, a fish hooked anywhere other than the mouth must be immediately released.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, to take protected aquatic wildlife is permitted on many public waters. However, boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1) Use or possession of corn while fishing is lawful, except as otherwise prohibited by the Wildlife Board in the Fishing Guidebook.

(2) Use or possession of live baitfish while fishing is unlawful, except as authorized by the Wildlife Board in the Fishing Guidebook.

(3) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(4) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(5) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(6) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Big Sand Wash, Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Red Fleet, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead striped bass, from Lake Powell, may be used as bait only in Lake Powell.

(f) Dead fresh or frozen salt water species including

sardines and anchovies may be used as bait in any water where bait is permitted.

(g) Dead mountain sucker, white sucker, Utah sucker, redside shiner, speckled dace, mottled sculpin, fat head minnow (all color variants including rosy red minnows), Utah chub, and common carp may be used as bait in any water where bait is permitted.

(h) Dead burbot, from Flaming Gorge Reservoir, may be used as bait only in Flaming Gorge Reservoir.

(7) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(8) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(9) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(10) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

(11) On any water declared infested by the Wildlife Board with an aquatic invasive species, or that is subject to a closure order or control plan under R657-60, it shall be unlawful to transport any species of baitfish (live or dead) from the infested water for use as bait in any other water of the State. Baitfish are defined as those species listed in sections (5)(b), (5)(c), (5)(f) and (8).

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);

(d) Flannelmouth sucker (Catostomus latipinnis);

(e) Gizzard shad (Dorosoma cepedianum), except at Lake Powell;

(f) Grass carp (Ctenopharyngodon idella);

(g) Humpback chub (Gila cypha);

(h) June sucker (Chasmistes liorus);

(i) Least chub (Iotichthys phlegethontis);

(j) Northern Leatherside chub (Lepidomeda copei);

(k) Razorback sucker (Xyrauchen texanus);

(l) Roundtail chub (Gila robusta);

(m) Southern Leatherside chub (Lepidomede aliciae);

(n) Virgin River chub (Gila seminuda);

(o) Virgin spinedace (Lepidomeda mollispinis); and

(p) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) As provided in this Section, a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(2)(a) Except as provided in Subsection (2)(b), nongame fish may be taken by angling, traps, bow and arrow, liftnets, dipnets, cast nets, seine, or spear in any water of the state with an open fishing season.

(b) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, crossbow, spear, or underwater spearfishing statewide:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) Provo River (below Deer Creek Dam);

(xvii) Spanish Fork River;

(xviii) Hobble Creek (Utah County);

(xix) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties);

(xx) Raft River (from the Idaho state line, including all tributaries);

(xxi) Weber River; and

(xxii) Yellow Creek.

(c) Nongame fish, may be taken by underwater spearfishing in the waters and under the conditions specified in Section R657-13-9.

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Except as provided in Section R657-13-21, lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than two lines may have hooks attached. On unhooked lines, bait is tied to the line so that the crayfish grasps the bait with its claw; and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1)(a) At all waters except Strawberry Reservoir, Scofield Reservoir, Panguitch Lake, Jordanelle Reservoir and Lake Powell, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir, Scofield Reservoir and Panguitch Lake, and smallmouth bass

taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(c) Fish may be filleted at any time and anglers may possess filleted fish at any time at Lake Powell.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4)(a) A person may not :

(i) take more than one daily limit of game fish in any one day; or;

(ii) possess more than one daily limit of each species or species aggregate, unless the additional fish are:

(A) from a previous days catch;

(B) eviscerated; and

(C) within the possession limit for each species or species aggregate.

(b) Fish kept at the angler's permanent residence do not count towards an angler's possession limit for that species or species aggregate.

(c) A person may possess a full possession limit of Bonneville cisco without eviscerating the fish from a previous days catch.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Daily and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Daily limits and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific daily, possession, or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, daily limit, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's daily limit and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5)(a) A person may not:

(i) take more than one daily limit in any one day; or

(ii) possess more than one daily limit of each species or species aggregate unless the additional fish are:

(A) from a previous days catch;

(B) eviscerated; and

(C) within the possession limit for each species or species aggregate.

(b) A person may possess a full possession limit of Bonneville cisco without eviscerating the fish from a previous days catch.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, daily and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-21. Catch-and-Kill Regulations.

(1) The Wildlife Board may designate in proclamation and guidebook waters where anglers are required to kill specified aquatic animal species that are caught.

(2) A person shall immediately kill any aquatic animal caught in a water identified by the Wildlife Board in proclamation or guidebook as catch-and-kill for that species.

(a) An aquatic animal killed subject to a catch-and-kill regulation may be:

(i) retained and consumed by the angler; or

(ii) disposed of:

(A) in the water where the aquatic animal was caught;

(B) at a fish cleaning station;

(C) at the angler's permanent residence; or

(D) at another location where disposal is authorized by law.

(3) A person may not release a live aquatic animal subject to a catch-and-kill regulation in the water it was caught or in any other water in the state.

KEY: fish, fishing, wildlife, wildlife law

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	23-19-1
	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-48. Wildlife Sensitive Species.
R657-48-1. Authority and Purpose.

(1) Pursuant to Section 23-14-19 of the Utah Code, this rule:

(a) establishes the process for designating wildlife sensitive species as part of an effort to prevent further imperilment of wildlife species native to Utah and preclude additional listings under the ESA;

(b) defines the Utah Sensitive Species List; and

(c) defines the manner in which the Sensitive Species List is intended to be used.

R657-48-2. Definitions.

(1) The terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Committee" means the Wildlife Sensitive Species Advisory Committee.

(b) "Department" means the Department of Natural Resources.

(c) "Division" means the Division of Wildlife Resources within the Department.

(d) "ESA" means the federal Endangered Species Act.

(e) "Executive Director" means Executive Director of the Department.

(f) "Interested Person" means an individual, firm, association, corporation, limited liability company, partnership, commercial or trade entity, any agency of the United States Government, the State of Utah, its departments, agencies and political subdivisions.

(g) "Wildlife sensitive species" means a native wildlife species or subspecies within the state that is undergoing or is likely to undergo substantial declines in population size or distribution, throughout significant portions of its range within the state, without cooperative management intervention or mitigation of threats.

(h) "Wildlife Sensitive species designation" means the decision to bestow or remove wildlife sensitive species status on a wildlife species or subspecies pursuant to this rule.

(i) "Utah Sensitive Species List" means the list of all current state sensitive species.

R657-48-3. Department Responsibilities.

(1) There is established a Wildlife Sensitive Species Advisory Committee within the Department of Natural Resources.

(2) The Department shall provide staff support, arrange meetings, keep minutes, and prepare and distribute final recommendations.

R657-48-4. Committee Membership and Procedure.

(1) Committee membership shall consist of:

(a) the Executive Director of the Department;

(b) the Director of the Utah Public Lands Policy Coordinating Office or a designee;

(c) the Director of the Division or a designee;

(d) the Director of the Division of Oil, Gas and Mining or a designee;

(e) the Director of the Division of Water Resources or a designee; and

(f) any other Department Division heads or designees as determined by the Executive Director of the Department.

(2) The Executive Director shall serve as chair.

(3) Three members, consisting of the Executive Director, the Division Director and the Director of the Division of Oil, Gas and Mining, shall constitute a quorum for meetings of the Committee.

(4) The Committee shall meet as specified by the Executive Director.

(5) The Division Director shall submit all proposed wildlife sensitive species designations to the Executive Director for Committee review:

(i) The Division shall support its proposals for wildlife sensitive species designations with:

(A) studies, investigations and research supporting the need for the designations;

(B) field survey and observation data; and/or

(C) federal, state, local and academic information on habitat, historical and current species distribution, threats to the species, population trends, and/or other data or information collected in accordance with generally accepted scientific techniques and practices, including findings expressed in the Utah Wildlife Action Plan.

(6) The Department will provide an assessment of potential impacts of the proposed designations and the existing social and economic needs of the affected communities and interests.

R657-48-5. Public Participation and Setting of Meeting Agenda.

(1)(a) All meetings of the Wildlife Sensitive Species Advisory Committee shall comply with the Utah Open and Public Meetings Act, Utah Code Ann. 52-4-101 et seq.

(b) The meeting agenda shall consist of items determined by the Executive Director, and copies shall be sent to Committee members.

(c) The agenda shall be posted on the Division website and distributed to the Committee members at least 28 calendar days prior to the meeting.

(2) Any interested person may:

(a) submit comments on proposed wildlife sensitive designations;

(i) comments must be submitted in writing to the Executive Director for review and must be submitted at least seven calendar days prior to the meeting; or

(b) request to make an oral presentation before the Committee.

(i) An interested person seeking to make a presentation before the Committee concerning any matter under review, must submit a written request and supporting documentation to the Executive Director at least seven calendar days prior to the meeting.

R657-48-6. Committee Review Actions.

(1) In conducting a review of issues, the Committee may:

(a) require additional information from the Division, the Department or interested persons;

(b) require the Division or interested persons to make presentations before the Committee or provide additional documentation in support or opposition of the recommendation;

(c) schedule additional meetings where public interest or agency concern merits additional discussion;

(d) undertake additional review functions as needed; or

(e) consider the need for involvement of other persons or agencies, or whether other action may be needed.

(2) Following the Committee's review and recommendation, the Executive Director shall make a final determination and, if warranted, recommend the approval of any or all proposed wildlife sensitive species designations to the Wildlife Board.

(3) The Executive Director's decision will be announced at that meeting, or the next formal meeting, on the proposed wildlife sensitive species designations or habitat designations, unless an alternative time is required by federal or state law, or rule.

R657-48-7. Wildlife Sensitive Species Designation Process.

(1) A wildlife sensitive species designation shall be made only after the Executive Director, following consideration of the Committee's recommendations, has made a formal written recommendation to the Wildlife Board, and after that Board has considered:

(a) the Executive Director's recommendation, and all comments on such recommendation; and

(b) all data, testimony and other documentation presented to the Committee and the Wildlife Board pertaining to such proposed designation.

(2) All wildlife sensitive species designations shall be made pursuant to the procedures specified in this rule

(3) The Wildlife Board may approve, deny or remand the proposed wildlife sensitive species designation recommendation to the Executive Director.

(4) Until a proposed wildlife sensitive species designation is finalized, the proposed designation may not be used or relied upon by any governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

(5) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife sensitive species designations as part of the administrative record and make such information available, subject to the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

(6) The Division shall maintain the Utah Sensitive Species List and update the list as necessary to maintain up-to-date status information on sensitive species which change because of:

(a) wildlife species' name changes due to taxonomic revisions;

(b) new wildlife sensitive species are designated pursuant to this rule; or

(c) wildlife sensitive species status is removed from species pursuant to this rule.

R657-48-8. Availability and Intended Uses.

(1) The Division shall make available by common electronic means on its website the wildlife sensitive species which are designated by this rule.

(2) Wildlife sensitive species designations are intended to inform natural resource management practices across the state by highlighting which wildlife species may warrant increased conservation attention through such means as habitat restoration, active species management, and avoidance, reduction, and mitigation of impacts, with ultimate goals of reducing the likelihood of future listings under the Endangered Species Act, and conserving the diversity of wildlife species native to Utah.

(3) Wildlife sensitive species designations may not be used by governmental entities as a basis to involuntarily restrict the private property rights of landowners and their lessees or permittees.

KEY: sensitive species
December 31, 2018 23-14-19
Notice of Continuation May 2, 2016 63-34-5(2)(a)

R708. Public Safety, Driver License.
R708-52. Air Pollution Mitigation Education Program.
R708-52-1. Purpose.

This rule provides the procedures for dissemination of information to each driver license applicant in regards to air quality improvement.

R708-52-2. Authority.

This rule is authorized by Subsection 53-3-104(1)(f).

R708-52-3. Definitions.

(1) Terms used in this rule are defined in Section 53-3-102.

(2) In addition:

(a) "Utah Driver Handbook" means the written handbook published annually by the Driver License Division that provides driving rules, best practices and safety guidelines for Utah drivers.

R708-52-4. Procedures.

(1) The Division of Air Quality shall provide the division educational information that reflects ways to improve air quality and harmful effects of vehicle emissions.

(2) The division shall provide the data obtained from the Division of Air Quality to each driver license applicant through the use of:

(a) the Utah Driver Handbook;

(b) displays in division field offices; and

(c) the division webpage.

KEY: air pollution, education, driver license
December 31, 2018 53-3-104

R714. Public Safety, Highway Patrol.
R714-160. Equipment Standards for Passenger Vehicle and Light Truck Safety Inspections.
R714-160-1. Authority.

This rule is authorized by Subsections 53-8-204(5) and 41-6a-1601(2).

R714-160-2. Purpose.

The purpose of this rule is to set minimum equipment standards governing passenger vehicle and light truck inspections in accordance with Sections 53-8-204 and 41-6a-1601.

R714-160-3. Definitions.

(1) Terms used in this rule are found in Sections 41-1a-102, 41a-6a-102, and 49 C.F.R. 571, et seq.

(2) In addition:

(a) "acute area" means:

(i) the area of a passenger vehicle windshield inside a 6 inch border measured from the edge of the glass where it meets the molding around the entire outside of the windshield; or

(ii) the area of a windshield of a commercial motor vehicle as defined in the Federal Motor Carrier Safety Regulations, extending upward from the height of the top of the steering wheel, excluding a 2 inch border at the top of the windshield, and a 1 inch border at each side of the windshield or windshield panel;

(b) "CNG" means compressed natural gas;

(c) "custom vehicle" means a motor vehicle as defined in Subsection 41-6a-1507(1);

(d) "division" means the Vehicle Safety Inspection section of the Utah Highway Patrol;

(e) "GVWR" means gross vehicle weight rating;

(f) "inspector" means a person with a valid certificate who is employed by a licensed station;

(g) "lifted vehicle" means a vehicle that has been raised from the original manufacturer's frame height;

(h) "lowered vehicle" means a vehicle that has been lowered from the original manufacturer's height;

(i) "online inspection certificate" means an inspection certificate created electronically through the Vehicle Safety Inspection System;

(j) "online inspection program" means the web-based inspection program used to record safety inspections;

(k) "OEM" means original equipment manufacturer;

(l) "paper inspection certificate" means an inspection certificate created by paper form;

(m) "passenger vehicle" means a vehicle with a gross vehicle weight rating less than 26,001 pounds that transports passengers, including the driver, or property, or any combination thereof;

(n) "salvage vehicle" means any vehicle as defined in Subsection 41-1a-1001(8);

(o) "station" means a business or government facility located in Utah that is managed or operated by a valid permit holder and conducts safety inspections; and

(p) "vintage vehicle" means a motor vehicle or trailer as defined in Section 41-21-1.

R714-160-4. Incorporation of Federal Motor Vehicle Safety Standards.

This rule incorporates by reference the standards found in 49 C.F.R. Part 571 as the minimum standards a motor vehicle must meet to pass a safety inspection, unless state law provides a different standard.

R714-160-5. Applicability of Rule.

This rule applies to all passenger vehicles and light trucks.

R714-160-6. Inspection Procedures.

(1) The inspector shall complete the following tasks prior to inspecting the vehicle:

(a) collect the appropriate paperwork such as registration, title, and bill of sale;

(b) verify the Vehicle Identification Number (VIN);

(c) record the owner's full name and complete vehicle information;

(d) record vehicle mileage;

(e) enter the inspection date and inspector number if using a paper form of the inspection certificate; and

(f) determine whether the motor vehicle needs a test drive and the purpose of test;

(i) if a test drive is needed off the station's property, the customer shall be informed.

(2) The inspector shall examine the vehicle's interior by completing the following tasks:

(a) inspect the windshield, side, and rear windows;

(b) identify mirror requirements and inspect mirrors;

(c) inspect seats and seat belts;

(d) inspect steering wheel/column, including horn and airbags;

(e) inspect brake pedal assembly and emergency brake system;

(f) inspect windshield wipers and washers;

(g) inspect heater and defrost;

(h) inspect dash, including warning indicator lights and speedometer;

(i) inspect doors and door parts; and

(j) check the neutral starting switch to determine whether the starter operates with the gear selector only in park or neutral on vehicles with automatic transmissions.

(3) The inspector shall examine the vehicle's exterior by completing the following tasks:

(a) inspect headlight high and low beams, including aiming;

(b) inspect parking lights, tail lights, signal lights, brake lights, marker lights, and reflectors;

(c) inspect for the proper color of lights;

(d) inspect the wheels and lugs, looking for cracks and loose or missing lugs;

(e) inspect tires for wear, damage, and proper inflation;

(f) inspect body of vehicle, including fenders, doors, hood, glass, and bumpers;

(g) inspect for broken glass, parts, and accessories; and

(h) inspect window tint with a tint meter, measuring light transmittance on the front side windows and windshield;

(i) the inspector shall record the tint readings on the certificate using the online inspection program or on the Safety Inspection Certificate if not using the online program.

(4) The inspector shall examine items under the vehicle's hood by completing the following tasks:

(a) inspect belts and hoses;

(b) inspect power steering system;

(c) inspect battery and electrical wiring;

(d) inspect exhaust system;

(e) inspect master cylinder and braking system; and

(f) inspect the fuel system.

(5) The inspector shall examine items under the vehicle by completing the following tasks:

(a) inspect steering system, including the wheel bearings, tie rods, rack, and pinion;

(b) inspect suspension components, including the springs and shocks;

(c) inspect exhaust and fuel system components;

(d) inspect body and floor pans; and

(e) inspect engine, transmission mounts, and drivetrain.

(6) The inspector shall examine the braking system by completing the following tasks:

(a) inspect brake pads/shoes;
(b) inspect brake rotors/drums;
(c) inspect brake components, both hydraulic and mechanical;
(d) inspect brake hoses for fluid leaks;
(e) record brake measurements using the online inspection program or on the Safety Inspection certificate if not using the online inspection program;
(f) issue a rejection inspection certificate on vehicles that fail a plate brake test but have adequate pad and or shoe thickness;
(g) if issuing a rejection inspection certificate, record the brake pad measurement on the certificate; and
(h) if a visual inspection is performed, remove one front and one rear wheel to inspect brake components.
(7) When inspecting a lifted vehicle, the inspector shall:
(a) inspect fenders and verify that each one covers the full width of the tire;
(b) inspect mud flaps;
(c) inspect frame height based on the GVWR;
(d) inspect for body lift;
(e) inspect for stacked blocks;
(f) inspect for modification of brake hoses;
(g) inspect headlight aim and vertical height; and
(h) inspect altered or modified steering and suspension parts that have been shortened, lengthened, welded.
(8) When inspecting lowered vehicles, the inspector shall:
(a) inspect that fenders cover full width of tire;
(b) inspect for mud flaps, when required;
(c) inspect for minimum ground clearance;
(d) inspect for removal of original suspension components;
(e) inspect headlight aim and vertical height; and
(f) inspect altered or modified steering and suspension parts that have been shortened, lengthened, or welded.
(9) The following procedures apply when a vehicle fails the safety inspection and the inspector is using a paper inspection certificate:
(a) the inspector shall complete a full vehicle inspection even after a reject item is found;
(b) if a vehicle fails an inspection and no repairs are immediately made at that station, then the inspector shall give the customer a rejection inspection certificate;
(c) the inspector shall not sign the rejection inspection certificate;
(d) a customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to the same station to verify repairs at no charge;
(i) customers may contact the division to request a waiver of additional fees if they exceed 15 days for circumstances beyond their control, such as backordered parts;
(e) the inspector shall return the State Tax and Owner copies to the division within 45 days of the inspection date for rejected vehicles that fail to return to the inspecting station;
(f) the inspector shall document any item rejected and repaired during an inspection as repaired on the inspection certificate;
(g) any inspector at a station may verify repairs of rejected items;
(h) if all rejected items have been repaired, the verifying inspector shall sign the safety inspection certificate; and
(i) if the verifying inspector is not the original inspector, the verifying inspector shall sign the safety inspection certificate, and enter his or her inspector license number on the Safety Inspection Certificate.
(10) The following procedures apply when a vehicle fails the safety inspection and the inspector is using an online inspection certificate:
(a) if all rejected items have been repaired, the verifying inspector shall sign the safety inspection certificate;
(b) if no repairs are made, the inspector shall print the rejection inspection certification and give it to the customer;
(c) the inspector shall not sign a rejection inspection certificate;
(d) a customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to any station that conducts online inspections to verify repairs at no charge;
(i) customers may contact the division to request a waiver of additional fees if they exceed 15 days for circumstances beyond their control, such as back ordered parts;
(e) the inspector shall document any item rejected and repaired during an inspection as repaired on the inspection certificate; and
(f) any inspector at any station that conducts online inspections may certify repairs made to rejected items. No additional charges may be added.
(11) The following procedures apply when a vehicle passes the safety inspection and the inspector is using a paper inspection certificate:
(a) the inspector performing the inspection shall sign the vehicle inspection certificate; and
(b) the customer shall be given the State Tax and Owner copies of the inspection certificate.
(12) The following procedures apply when a vehicle passes the safety inspection and the inspector is using an online inspection certificate:
(a) the inspector shall print the vehicle inspection certificate and give it to the customer; and
(b) the inspector performing the inspection shall sign the printed inspection certificate prior to giving it to the customer.
(13) The following inspection report procedures apply when the inspector is using paper inspection certificates:
(a) the report forms shall include the following information:
(i) date the inspection was completed;
(ii) owner's name;
(iii) year and make of the vehicle;
(iv) vehicle identification number;
(v) appropriate notation in any of the repair columns;
(vi) total cost of the repair, including the inspection fee; and
(vii) inspection certificate or sticker number;
(b) inspection certificate or sticker numbers of paper books shall be listed in numerical order starting with the lowest number and listed in groups of 25;
(c) a separate report form shall be used for the inspection certificates and for the stickers;
(d) duplicate inspection certificates or stickers shall be noted as "duplicate" on the report form;
(e) lost or stolen inspection certificates or stickers shall be listed as "lost or stolen" on the report form;
(f) inspection certificates and stickers rendered unusable through mishap shall be recorded as "voided" on the report form and inspection certificates and stickers shall be returned to the Vehicle Safety Inspection office;
(g) rejected vehicles that have not returned within 15 days to the original station shall be listed in the same order, and the words "rejected" printed on the same line;
(h) failure to submit the required reports may result in suspension or revocation of a permit; and
(i) the inspector shall return the State Tax and Owner copies to the division within 45 days of the original inspection date for rejected vehicles that fail to return for re-inspection.

R714-160-7. Registration.
(1) When reviewing vehicle registration papers, the inspector shall:
(a) check the vehicle registration certificate, identification number on the vehicle, license plates, and vehicle description

for agreement;

(b) enter the manufacturer's vehicle identification number and license plate number into the online program or record on the safety inspection certificate if not using the online program;

(c) advise the customer when paperwork disagreements are accidental or clerical in nature; and

(d) issue a rejection inspection certificate when:

(i) the registration certificate, vehicle identification number, license plate, and vehicle description are not in agreement; or

(ii) the vehicle identification number is missing or obscured.

(2) The inspector shall examine the vehicle's license plates and complete the following requirements:

(a) if the vehicle is registered, verify the license plates are securely mounted and clearly visible; and

(b) advise the customer when:

(i) a license plate is not securely fastened to the front and rear of the vehicle, in a horizontal position, not less than 12 inches from the ground when measured from the bottom of the license plate;

(ii) a license plate is not located in a clearly visible position; or

(iii) a license plate is covered with foreign material or otherwise not clearly legible.

R714-160-8. Tires and Wheels.

(1) When examining the tire and wheels, the inspector shall:

(a) check tires for cuts, cracks, or sidewall plugs; and

(i) advise the customer when a tire has weather cracks, but no cords showing; or

(ii) issue a rejection inspection certificate when a tire has sidewall plugs, cuts, or cracks deep enough to expose cords;

(b) check tires for indication of tread separations; and

(i) issue a rejection inspection certificate when tire integrity has been compromised due to visible bumps, bulges, or tire separation;

(c) check tire pressure for proper inflation with tire pressure gauge; and

(i) issue a rejection inspection certificate when:

(A) a tire is flat, has a noticeable air leak, or is inflated to less than half, or 50% of the vehicle manufacturer's recommended tire pressure; or

(B) a tire is over inflated;

(d) check tires for regrooving or recutting; and

(i) issue a rejection inspection certificate when a tire is regrooved and is not identifiable as regroovable;

(e) check tires for "restricted usage only" markings; and

(i) issue a rejection inspection certificate when a tire is marked "for farm use only", "off-highway use only", "for racing only", "for trailers only", or other non-highway use;

(f) check tires for the same size and same type of construction, but mismatched tread design is allowed; and

(i) issue a rejection inspection certificate when tires on the same axle are not the same size or construction;

(g) check tire wear; and

(i) advise the customer when tread wear bars are touching the road surface; or

(ii) issue a rejection inspection certificate when:

(A) the tread depth is less than 2/32 inch when measured in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire. Tread depth measurement shall not use a tread wear bar; or

(B) secondary rubber is exposed in the tread or sidewall area;

(h) check wheels for damage and proper mounting; and

(i) issue a rejection inspection certificate when:

(A) wheel bolts, nuts, studs, or lugs are loose, missing, or not properly fastened;

(B) wheels are bent, cracked, re-welded, or have elongated bolt holes;

(C) spacers are used to increase the wheel track width; or

(D) bead lock wheels are installed that do not meet the SAE J2530 Aftermarket Wheel Performance Requirements and Test Procedures;

(i) check vehicle tires for proper size and weight load ratings; and

(i) issue a rejection inspection certificate when:

(A) tires do not meet the proper weight load rating for the vehicles actual gross vehicle weight; or

(B) tires are mounted on wheels that are not within tire manufacturer specifications;

(j) check that fenders and mudflaps are in place when required; and

(i) advise the customer when:

(A) fenders or fender extenders do not cover the full width of a tire;

(B) rear tires do not have the top 50% of the tire covered by mudflaps, fenders, or the vehicle body construction when required; or

(C) rear mudflaps are not directly aligned with the tire and at least as wide as the tire when required; or

(ii) issue a rejection inspection certificate when:

(A) tire tread is not fully covered by existing fenders or fender extenders;

(B) tires make contact with any other vehicle parts or accessories;

(C) fender flares or mud flaps are not made of durable material; or

(D) fender flares or mud flaps are not secured properly; and

(k) check for studded snow tires; and

(i) advise the customer when studded snow tires are mounted on a vehicle between April 1 and October 14 of any year.

R714-160-9. Steering.

(1) The steering system must be inspected to determine if excessive wear or maladjustment of the linkage or steering gear exist. Vehicle must be on a smooth, dry, level surface. On vehicles equipped with power steering, the engine must be running and the fluid level, belt tension and condition must be adequate before testing.

(2) When inspecting the vehicle's steering system, the inspector shall:

(a) measure lash at steering wheel; and

(i) issue a rejection inspection certificate when steering wheel movement exceeds 2 inches for power steering, 3 inches for manual steering, or 0.4 of an inch for rack and pinion;

(b) check the size of steering wheel; and

(i) issue a rejection inspection certificate when steering wheel is less than 13 inches in outside diameter or is not of full circular construction;

(c) check for binding or jamming conditions by turning the steering wheel through a full right and left turn without the brake being applied; and

(i) issue a rejection inspection certificate when:

(A) steering is incapable of being turned fully from right to left; or

(B) one wheel turns before the opposite wheel;

(d) check the condition and tension of steering belts if the vehicle is equipped with power steering; and

(i) advise the customer when steering belts are cracked or are not properly adjusted; or

(ii) issue a rejection inspection certificate when steering belts are frayed or torn;

(e) check the condition of the power steering system,

hoses, hose connections, cylinders, and valves; and
(i) issue a rejection inspection certificate when:
(A) hoses or hose connections have a dripping leak; or
(B) cylinders or valves have a dripping leak;
(f) check the condition of the pump and check for secure mounting and proper fluid level in the reservoir; and
(i) issue a rejection inspection certificate when:
(A) pump mounting parts are loose or broken;
(B) the system is inoperative;
(C) reservoirs have a dripping leak; or
(D) the fluid level is below minimum fluid level indicators;
(g) check for separation of the shear capsule from bracket and general looseness of steering wheel and column; and
(i) issue a rejection inspection certificate when:
(A) the shear capsule is separated from bracket; or
(B) the wheel and column can be moved as a unit;
(h) check movement on tilt steering wheels; and
(i) issue a rejection inspection certificate when:
(A) adjustable steering wheel cannot be secured in all positions;
(B) steering column has 3/4 inch or more movement at the center of the steering wheel when it is in locked in position; or
(C) steering wheel and column is on the right side of the vehicle that is not OEM or the owner does not possess a valid waiver from the safety inspection office;
(i) check the idler arms and tie rod ends for looseness in excess of OEM specifications; and
(i) advise the customer when tie rod grease seals are cut, torn, or otherwise damaged to the extent that lubricant will not be retained; or
(ii) issue a rejection inspection certificate when:
(A) there is looseness in the tie rod ends or idler arm in excess of OEM specifications; or
(B) the tie rod is bent, causing the vehicle to be out of alignment;
(j) conduct a thorough inspection of the complete rack and pinion system; and
(i) issue a rejection inspection certificate when:
(A) there is any looseness in excess of OEM specifications;
(B) there is any looseness in the tie rod ends in excess of OEM specifications; or
(c) there is a dripping leak;
(k) check the steering gear box for proper function; and
(i) advise when the gearbox on a vehicle with manual steering has a dripping leak; or
(ii) issue a rejection inspection certificate when:
(A) there is looseness at the frame or mounting;
(B) there are any cracks;
(C) any mounting brackets are cracked;
(D) any fasteners are missing;
(E) there is a dripping leak; or
(F) any welded repair is present;
(l) check the pitman arm; and
(i) issue a rejection inspection certificate when:
(A) the gearbox output shaft has movement inside the pitman arm; or
(B) any welded repair is present;
(m) check all wheel bearings for looseness; and
(i) issue a rejection inspection certificate when any bearing has movement of more than 1/8 inch when measured at the outer circumference of the tire; and
(n) check all the steering components and axle nuts for required cotter pins; and
(i) issue a rejection inspection certificate when any cotter pins are missing or ineffective.

R714-160-10. Suspension.
(1) When inspecting the vehicle's suspension, the inspector shall:
(a) support vehicle with the ball joints loaded and wheels straight ahead, wipe the grease fitting and check to ensure the surface is free of dirt and grease and determine if checking surface extends beyond the surface of the ball joint cover; and
(i) advise the customer when any ball joint seal is cut, torn, or otherwise damaged to the extent it will not retain lubricant; or
(ii) issue a rejection inspection certificate when:
(A) a ball joint wear indicator is flush or inside the cover surface; or
(B) ball joint movement is in excess of manufacturer's specifications;
(b) if the vehicle does not have a wear indicating ball joint, unload the ball joints by raising the vehicle and checking the ball joint seals; and
(i) advise the customer when any ball joint seals is cut, torn, or otherwise damaged to the extent that it will not retain lubricant; or
(ii) issue a rejection inspection certificate when the ball joint movement is in excess of manufacturer's specifications;
(c) position a pry bar under the front tire and with a lifting motion, sufficient to overcome the weight of the wheel assembly only, and move the wheel up and down; and
(i) issue a rejection inspection certificate when the ball joint movement is in excess of manufacturer's specifications;
(d) grasp the tire and wheel assembly at the top and bottom and move the assembly in and out to detect looseness; and
(i) issue a rejection inspection certificate when movement is in excess of manufacturer's specifications;
(e) visually inspect for broken or damaged leaf springs; and
(i) issue a rejection inspection certificate when:
(A) springs are missing, cracked, broken, disconnected, or cut; or
(B) springs are sagging and allow the body to come in contact with the tires;
(f) check the spring shackles; and
(i) issue a rejection inspection certificate when:
(A) the shackles are damaged, loose, or have been modified and do not meet OEM specifications; or
(B) the shackles do not otherwise meet OEM specifications;
(g) check the U-bolts; and
(i) issue a rejection inspection certificate when the U-bolts are damaged, loose, or the bolts are not at least flush with the nut;
(h) check the coil springs; and
(i) issue a rejection inspection certificate when:
(A) springs are broken or not properly attached; or
(B) springs have been heated, cut, are missing, or altered from OEM specifications;
(i) visually inspect the sway bars, torsion bars, and tracking components for damage; and
(i) issue a rejection inspection certificate when:
(A) any sway bar, torsion bar, or any tracking component is loose, cracked, bent, or disconnected; or
(B) bushings are missing, worn, or distorted so that looseness is present;
(j) check the control arms for cracks, bends or breakage; and
(i) issue a rejection inspection certificate when the upper or lower control arms are bent, cracked, welded, or otherwise do not meet OEM specifications;
(k) check the bushings for wear or distortion; and
(i) issue a rejection inspection certificate when the bushings are missing, worn, or distorted so that looseness is present;

(l) check the spring mounted strut assembly, which must be inspected very closely for leakage, shaft binding, and poor damping; and

(i) advise the customer when the struts have poor damping or leakage; or

(ii) issue a rejection inspection certificate when:

(A) there is any wear in the upper mount assembly;

(B) there is any horizontal or vertical movement in the lower shaft mounting area; or

(C) a shaft is bent or binding;

(m) visually inspect shock absorbers for looseness of mounting brackets and bolts; and

(i) advise the customer when the shocks have poor damping or leakage; or

(ii) issue a rejection inspection certificate when:

(A) shock absorbers are missing or disconnected;

(B) Mounting brackets, bolts, or bushings are loose, broken, or missing; or

(C) a shock is bent or binding;

(n) check the CV Axle and axle boots; and

(i) advise the customer when the CV boots are cracked or torn; or

(ii) issue a rejection inspection certificate when a CV joint makes popping or clicking noise while turning during test drive; and

(o) check the U-joint for wear; and

(i) advise the customer when wear is found in the U-joint; or

(ii) issue a rejection inspection certificate when the U-joint, driveline, or supporting hardware is worn or damaged to the extent that component separation is imminent.

R714-160-11. Altered Vehicles.

(1) When inspecting lowered vehicles, the inspector shall:

(a) ensure that all replacement parts and equipment are equal to or greater in strength and durability as OEM parts; and

(i) advise the customer when fenders or fender extenders do not cover full width of a tire; or

(ii) issue a rejection inspection certificate when:

(A) any part of the vehicle, other than tires, rims, or mudflaps, are less than three inches above the ground or contact the ground;

(B) the fuel tank is exposed to damage without a skid plate;

(C) exhaust system brackets are not secure;

(D) wheels or tires make contact with the body or other vehicle component;

(E) tire tread is not fully covered by existing fenders or fender extenders;

(F) braking, steering, or suspension is modified, disconnected, or changed in any manner that may impair the safe operation of the vehicle;

(G) main springs or shocks have been removed to accommodate a hydraulic or air suspension system;

(H) headlamps are less than 22 inches from the ground when measured from the ground to the center of the low beam bulb;

(I) any light does not meet mounting height specifications as outlined in the Federal Motor Vehicle Safety Standards; or

(J) chassis or suspension components have been altered or changed from OEM that reduces the vehicle stability and safety integrity.

(2) When inspecting lifted vehicles, the inspector shall:

(a) check the braking and steering system components; and

(i) issue a rejection inspection certificate when the braking or steering systems have been altered, modified, disconnected, or changed in any manner that may impair the safe operation of the vehicle;

(b) check vehicle lift by frame height measuring from the ground to the bottom of the frame on the left side of the vehicle under the driver's seat. If the door certification plate has been removed, the vehicle shall be considered to be 4,500 pounds; and

(i) issue a rejection inspection certificate when:

(A) the frame height is greater than 24 inches on a vehicle with a GVWR less than 4,500 pounds;

(B) the frame height is greater than 26 inches on a vehicle with a GVWR of 4,500 pounds and less than 7,500 pounds; or

(C) the frame height is greater than 28 inches on a vehicle with a GVWR of 7,500 pounds or more;

(c) check the body lifts above the frame; and

(i) issue a rejection inspection certificate when the lowest part of the body floor is raised more than 3 inches above the top of the frame;

(d) check the vehicle for front and rear axle blocks; and

(i) issue a rejection inspection certificate when:

(A) axle blocks have been added to the front axle;

(B) there are stacked blocks on the rear axle, which includes two blocks that have been welded together; or

(C) there are stacked frames;

(e) check vehicle tire width and wheel track; and

(i) advise the customer when a fender or fender extender does not cover the full width of a tire; or

(ii) issue a rejection inspection certificate when:

(A) the tire tread protrudes beyond the original fender or fender extender; or

(B) spacers are used;

(f) check the mudflaps if the vehicle has been altered, which includes the addition of larger tires and suspension lift kits; and

(i) advise the customer when:

(A) fenders do not cover the top 50% of the tire when required;

(B) mudflaps are not present on the rear wheels of a vehicle that has been altered from its original OEM specifications; or

(C) rear mudflaps are not directly aligned with the tire and do not cover the full width of the rear tires and have a ground clearance of not more than 50% of the diameter of a rear-axle wheel, under any conditions of loading the vehicle;

(g) check lights for proper height requirements; and

(i) issue a rejection inspection certificate when any light does not meet mounting height specifications as outlined in the Federal Motor Vehicle Safety Standards; and

(h) check fuel tank; and

(i) issue a rejection inspection certificate when the fuel tank is exposed with no impact protection.

R714-160-12. Brakes.

(1) Safety inspection stations are not required to use a computerized brake testing device as a mandatory piece of inspection equipment.

(2) When using a plate brake tester, Safety inspection stations and inspectors shall:

(a) follow the equipment manufacturer procedures for testing;

(b) be certified by the equipment manufacturer or an authorized agent of the division;

(c) renew the inspector certification every three years;

(d) display the inspector certification card for the equipment being used in a prominent location;

(e) display the computerized brake testing equipment certification in a prominent location;

(f) ensure the manufacturer has certified the equipment annually;

(g) pull two wheels upon the failure of the plate brake test to check brake components; and

(i) issue a rejection inspection certificate on vehicles

failing the plate brake test, even if the vehicle has adequate pad and or shoe thickness;

(h) complete a visual two-wheel inspection of brake components when requested by a customer; and

(i) display at the station a sign in a conspicuous location with the following components:

(i) the sign must be 14 x 24 inches;

(ii) lettering shall be one inch in vertical height and not less than one quarter of an inch in width; and

(iii) the sign must contain a statement with the Station name and station number followed by the quotation "only uses a computerized plate brake tester to inspect the braking system efficiency of a vehicle for a safety inspection. This test does not measure brake lining thickness or condition of the drum / rotor; however, at the customer's request, we will pull two wheels for a visual check of the braking system (per Utah Safety Inspection requirements)".

(j) If the vehicle failed on a plate brake tester, then it must pass safety inspection on a plate brake tester.

(3) When conducting a visual inspection of a vehicle's brake system, the inspector shall:

(a) remove at least one front and one rear wheel for a brake inspection on all vehicles less than 10,000 pounds GVWR;

(i) vehicles over 10,000 pounds GVWR are not required to have wheels pulled if the vehicle is equipped with inspection ports/slots; and

(b) inspect the brake drum, linings, pads, discs, calipers, and the condition of all mechanical components;

(i) visual inspection through the wheel openings is not an approved inspection procedure; and

(ii) adjustment slots are not adequate for inspecting brakes or if the vehicle has open brake drums.

(4) When inspecting the hydraulic brake system of a vehicle, the inspector shall:

(a) test the pedal reserve according to the manufacture's specifications; and

(i) issue a rejection inspection certificate when there is less than 20% of the total available pedal travel when the brakes are fully applied;

(b) check the wheel cylinders for leakage; and

(i) issue a rejection inspection certificate when any wheel cylinders leak;

(c) inspect hydraulic hoses and tubes for exposed fabric cord, flattened, restricted, or unsecured lines; and

(i) issue a rejection inspection certificate when hoses or tubing are cracked, leaking, or show exposed fabric cord, flattened, restricted, or are unsecured; or

(ii) brake hoses are not DOT approved or have been altered; and

(d) inspect master cylinder for leakage and fluid level; and

(i) issue a rejection inspection certificate when:

(A) master cylinder leaks or fails to operate properly;

(B) master cylinder is below the add line or less than 3/4 full, whichever is less; or

(C) master cylinder gasket is damaged.

(5) When inspecting the dual hydraulic circuits of a vehicle, the inspector shall:

(a) check any vehicles equipped with a brake warning light and test for operation of light; and

(i) issue a rejection inspection certificate when:

(A) a warning light remains illuminated or comes on when brake pedal is depressed; or

(B) a warning light does not operate when required.

(6) When inspecting brakes with vacuum assist of a vehicle, the inspector shall:

(a) check the condition of vacuum system for collapsed, broken, badly chafed, improperly supported tubes, and loose or broken hose clamps; and

(i) issue a rejection inspection certificate when:

(A) hoses, tubes, or booster are leaking;

(B) the system is collapsed, broken, badly chafed, showing metal or fabric cord;

(C) the system is improperly supported or loose; or

(D) hoses or tubes are exposed to damage from excessive heat, debris, or rubbing; and

(b) determine if the system is operating by turning off engine and depressing the brake pedal several times to deplete all vacuum in the system, and then starting the engine while maintaining pedal force and observe if the pedal falls slightly when the engine starts; and

(i) issue a rejection inspection certificate when the service brake pedal does not fall slightly as engine is started and while pressure is maintained on pedal.

(7) When inspecting brakes with a hydraulic booster of a vehicle, the inspector shall:

(a) check the integrated hydraulic booster; and

(i) issue a rejection inspection certificate when:

(A) the brake pedal does not move down slightly as the pump builds pressure; or

(B) the brake warning lights remain on longer than 60 seconds; and

(b) check the braking system, while fully charged, for leaks and proper fluid levels; and

(i) issue a rejection inspection certificate when:

(A) fluid reservoir is below the add line or less than 3/4 full, whichever is less;

(B) braking system has broken, kinked or restricted fluid lines or hoses; or

(C) braking system has any leakage of fluid at the pump or brake booster, or on any of the lines or hoses in the system.

(8) When inspecting brake drums of a vehicle, the inspector shall:

(a) check the condition of the drum friction surface for damage, contamination, and substantial cracks; and

(i) issue a rejection inspection certificate when:

(A) there are substantial cracks, other than short hairline heat cracks, on the friction surface extending to the open edge of the drum; or

(B) any part of the brake drum missing or is in danger of falling away;

(ii) a vehicle may pass inspection with short hairline heat cracks;

(b) check for cracks on the outside of drum; and

(i) issue a rejection inspection certificate when a brake drum has external cracks, other than short hairline cracks;

(c) check for mechanical damage; and

(i) issue a rejection inspection certificate when there is evidence of mechanical damage other than wear;

(d) check for leaks at all grease or oil seals; and

(i) issue a rejection inspection certificate when the leakage of oil, grease, or brake fluid contaminates the brake components; and

(e) check the drum diameter; and

(i) issue a rejection inspection certificate when the drum is turned or worn beyond the manufacturer's specifications.

(9) When inspecting brake rotors of a vehicle, the inspector shall:

(a) check the condition of the rotor friction surface for substantial cracks; and

(i) issue a rejection inspection certificate when:

(A) there are substantial cracks, other than short hairline cracks, on the friction surface extending to open edge of rotor;

(B) the friction surface is contaminated with oil or grease; or

(C) any part of the brake rotor is missing or is in danger of falling away; and

(b) check the rotor thickness; and

(i) issue a rejection inspection certificate when the rotor

thickness is less than the manufacturer's specifications.

(10) When inspecting the bonded lining and pads of a vehicle, the inspector shall:

(a) check the primary and secondary lining thickness at the thinnest point; and

(i) advise the customer when the lining thickness is worn to 2/32 inch; or

(ii) issue a rejection inspection certificate when the lining thickness is worn to less than 2/32 inch.

(11) When inspecting the riveted lining and pads of a vehicle, the inspector shall:

(a) check for loose or missing rivets; and

(i) issue a rejection inspection certificate when:

(A) any rivets are loose or missing; or

(B) the lining thickness is worn to less than 2/32 inch; and

(b) check the primary and secondary lining thickness above the rivet head by measuring at the thinnest point with the calipers removed; and

(i) issue a rejection inspection certificate when the lining thickness is less than 2/32 inch above any rivet head.

(12) When inspecting the brake linings of a vehicle, the inspector shall:

(a) check for broken or cracked linings; and

(i) issue a rejection inspection certificate when the linings are broken, cracked, or not firmly and completely attached to shoe;

(b) check for contamination of the friction surface; and

(i) issue a rejection inspection certificate when the friction surface is contaminated with oil, grease, or brake fluid;

(ii) once a brake lining has been contaminated, replacement is required; and

(c) check for uneven lining wear; and

(i) advise the customer when the lining is uneven or grooved.

(13) When inspecting the mechanical brake components of a vehicle, the inspector shall:

(a) check for missing or defective mechanical components; and

(i) issue a rejection inspection certificate when mechanical parts are missing, incompatible, broken, or badly worn;

(b) check for frozen calipers, rusted or inoperative components, missing spring clips, and defective grease retainers; and

(i) issue a rejection inspection certificate when:

(A) any mechanical parts are frozen, inoperative, missing, or defective; or

(B) the backing plate or brake shoe is damaged, restricting free movement of the brake shoe; and

(c) check for restriction of shoe movement at the backing plate and for binding between the brake shoe and anchor pins; and

(i) issue a rejection inspection certificate when the shoes and anchor pins are improperly positioned or misaligned.

(14) When inspecting the parking brake of a vehicle, the inspector shall:

(a) check holding ability; and

(i) issue a rejection inspection certificate when the parking brake does not operate or fails to hold the vehicle; and

(b) check the ratchet or the locking device; and

(i) issue a rejection inspection certificate when the ratchet, pawl or other locking device fails to hold the brake in an applied position.

(15) When inspecting the Anti-Lock Brakes (ABS) of a vehicle, the inspector shall:

(a) check the ABS warning light and system for proper operation; and

(i) advise the customer when:

(A) the ABS light fails to light, fails to shut off after 60 seconds, or when 5 rapid beeps are heard when ignition switch is turned to the on position; or

(B) ABS components are broken, missing, or disconnected.

R714-160-13. Lighting.

(1) When inspecting the headlamps of a vehicle, the inspector shall:

(a) check headlamps for proper mounting; and

(i) issue a rejection inspection certificate when:

(A) mounting brackets are loose, missing, or damaged in any way so that a headlamp cannot be properly and securely mounted; or

(B) a vehicle headlamp is lower than 22 inches or exceed 54 inches, measured from the ground to the center of the headlamp;

(b) check headlamp for proper aim and lighting using a mechanical headlamp aiming device or by checking light at 10 feet measured from the front of the vehicle to a wall; and

(i) issue a rejection inspection certificate when:

(A) headlamp aim deviates more than four inches in any direction;

(B) a headlamp is less than 22 inches or greater than 54 inches measured from the ground to the center of the low beam;

(C) a headlamp fails to light properly;

(D) a headlamp projects other than white light; or

(E) a headlamp does not comply with federal standards; and

(c) check headlamps for holes, breakage, and non-factory colored covers or non-transparent covers; and

(i) advise the customer when a headlamp has minor holes or cracks in the headlight lens; or

(ii) issue a rejection inspection certificate when:

(A) a headlamp covering not approved by the department is placed on or in front of any headlamp, or a factory-installed light or cover is faded or painted to the point that components inside are not distinguishable;

(B) a headlamp cover is broken or missing; or

(C) a headlamp cover is tinted, colored, or painted other than clear; and

(d) check the dimmer switch for proper functioning and ensure that both high and low beams function; and

(i) issue a rejection inspection certificate when the dimmer switch fails to work properly.

(2) When inspecting the backup lights of a vehicle, the inspector shall:

(a) check the backup lights for proper functioning; and

(i) advise the customer when the backup lights are missing or fail to light; or

(ii) issue a rejection inspection certificate when the backup lights remain illuminated when transmission is not in reverse.

(3) When inspecting the hazard warning lamps of a vehicle, the inspector shall:

(a) check the hazard warning lamps for proper functioning; and

(i) issue a rejection inspection certificate when:

(A) the hazard warning lamps fail to function properly; or

(B) there is any tinted cover over the lens.

(4) When inspecting a vehicle's interior lamps, the inspector shall:

(a) check the interior lamps for proper functioning; and

(i) issue a rejection inspection certificate when turn signal indicators, high beam indicator, or brake warning indicator fail to function.

(5) When inspecting the vehicle's parking lamps, the inspector shall:

(a) check the parking lamps for proper functioning; and

(i) issue a rejection inspection certificate when:

(A) parking lamps fail to function properly or display an unapproved color; or

(B) any tinted cover is over the lens.

(6) When inspecting the side marker lamps of a vehicle, the inspector shall:

(a) check the side marker lamps for proper functioning and color; and

(i) issue a rejection inspection certificate when:

(A) side marker lamps are not functioning properly;

(B) side marker lamps or side reflectors are not the correct color, which must be yellow or amber on the front of the vehicle and red on the rear of the vehicle; or

(C) there is any tinted cover over the lens.

(7) When inspecting the tail lamp assembly of a vehicle, the inspector shall:

(a) check the tail lamp assembly for proper lens and required reflex reflectors; and

(i) issue a rejection inspection certificate when:

(A) rear lenses do not produce red light, are painted, or covered by any tinted cover;

(B) lenses are missing required reflectors; or

(C) there is tinting or material that obstructs the original design of the light;

(b) check lens covers for breakage; and

(i) issue a rejection inspection certificate when:

(A) a tail lamp lens is broken to the extent that any white light shows through the broken area; or

(B) there is a tinted cover or temporary patch;

(c) check for the proper operation; and

(i) issue a rejection inspection certificate when tail lamps fail to light properly;

(d) check for proper mounting; and

(i) issue a rejection inspection certificate when tail lamps are not securely mounted; and

(e) check for visibility; and

(i) issue a rejection inspection certificate when lamps are not visible from a distance of 500 feet in normal light.

(8) When inspecting the stop lamps of a vehicle, the inspector shall:

(a) check the stop lamps for proper color; and

(i) issue a rejection inspection certificate when:

(A) a stop lamp lens does not produce a steady burning red light;

(B) a stop lamp is painted or tinted;

(C) a stop lamp has any cover that partially or entirely obstructs the original design of the light; or

(D) a stop lamp has a blue dot tail light;

(b) check the stop lamps for breakage; and

(i) issue a rejection inspection certificate when:

(A) a stop lamp lens is broken to the extent that white light is visible to the rear; or

(B) there is a tinted cover or a temporary patch;

(c) check for the correct operation of stop lamps; and

(i) issue a rejection inspection certificate when:

(A) a stop lamp do not operate when required; or

(B) a stop lamp fails to light properly;

(d) check for proper stop lamp mounting; and

(i) issue a rejection inspection certificate when a stop lamps are not securely mounted;

(e) check the visibility of stop lamps; and

(i) issue a rejection inspection certificate when:

(A) a stop lamp is not visible from a distance of 500 feet in normal light;

(B) LED lights have less than 50% of the diodes illuminated;

(C) a stop lamp lens does not produce a steady burning red light;

(D) a stop lamp is painted or tinted; or

(E) a stop lamp has any cover that partially or entirely obstructs the original design of the light; and

(f) check center high-mounted stop lamps, if applicable; and

(i) issue a rejection inspection certificate when:

(A) a center high-mounted stop lamp is not present when required;

(B) a center high-mounted lamp fails to light;

(C) any aftermarket tint has been applied over the center high-mounted stop lamp;

(D) LED lights have less than 50% of diodes illuminated; or

(E) a lens does not produce a steady burning red light, except as provided in Section 41-6a-1604;

(F) a lens is painted; or

(G) a lens has a cover that partially or entirely obstructs the original design of the light;

(ii) center high-mounted stop lamps are required on all passenger vehicles manufactured after September 1985;

(iii) trucks whose overall width is less than 80 inches and GVWR is 10,000 pounds or less, manufactured after September 1, 1993, must be equipped with a high-mounted stop lamp.

(iv) trucks greater than 80 inches in overall width and 10,000 pounds GVWR do not require a high-mounted stop lamp;

(v) a truck equipped with a camper shell at the time of the inspection that covers the center high-mounted stop lamp is acceptable; and

(vi) a truck shell that was manufactured with a center high-mounted stop lamp is required to function if the truck is equipped with a high-mounted stop lamp.

(9) When inspecting the turn signal operation of a vehicle, the inspector shall:

(a) check the turn signals on all vehicles manufactured in 1956 and later; and

(i) advise the customer when one of the two bulbs fails to illuminate in a two-bulb system; or

(ii) issue a rejection inspection certificate when:

(A) the vehicle is not equipped with proper signals; or

(B) a turn signal fails to function;

(b) check the switch for proper functioning; and

(i) advise the customer when the switch does not cancel automatically for vehicles manufactured in 1956 or later; or

(ii) issue a rejection inspection certificate when the turn signal lever needs to be held in the on position;

(c) check the condition of the lens; and

(i) issue a rejection inspection certificate when:

(A) a turn signal lens is tinted, painted, broken or missing;

(B) any tinted cover or foreign material is over the lens; or

(C) there is a temporary patch on the cover or lens;

(d) check for proper mounting; and

(i) issue a rejection inspection certificate when the turn signals are not securely mounted;

(e) check for the proper color of lens and bulbs; and

(i) issue a rejection inspection certificate when:

(A) turn signal colors are not red, yellow, or amber in the rear of the vehicle;

(B) turn signal color is not amber in the front of the vehicle; or

(C) a turn signal lens or bulb is painted; and

(f) check for visibility of lens; and

(i) issue a rejection inspection certificate when turn signals are not visible from a distance of 100 feet in normal light.

R714-160-14. Electrical System.

(1) When inspecting the electrical system of a vehicle, the inspector shall:

(a) check the horn; and

(i) advise the customer when the horn is not securely fastened; or

(ii) issue a rejection inspection certificate when the horn does not function properly or is not audible under normal

conditions at a distance of at least 200 feet;

(b) check the electrical switches and wiring; and

(i) advise the customer when:

(A) electrical switches fail to function as designed for OEM required equipment;

(B) connections show signs of corrosion; or

(C) permanent connection wires are not soldered and insulated; or

(ii) issue a rejection inspection certificate when wiring insulation is worn or rubbed bare;

(c) check the automatic or manual transmission safety starting switch; and

(i) issue a rejection inspection certificate when:

(A) the starter operates in any gear other than "P" or "N" for an automatic transmission; or

(B) the vehicle starter operates without the clutch depressed for a manual transmission, when equipped with a neutral safety switch; and

(d) check for battery securement; and

(i) issue a rejection inspection certificate when a battery is not properly secured.

R714-160-15. Vehicle Windows.

(1) When inspecting the windshield of a vehicle, the inspector shall:

(a) check the windshield for appropriate "AS" certification number; and

(i) issue a rejection inspection certificate when:

(A) the windshield is missing; or

(B) the windshield does not have AS-1, AS-10, or AS-14 markings;

(b) visually inspect the windshield for scratches, cloudiness, etching, or other marks; and

(i) issue a rejection inspection certificate when:

(A) the windshield glass is scratched, discolored, clouded, or pitted to a level that obscures vision;

(B) the windshield cloudiness is more than one inch from each side edge, more than four inches down from the top edge, or more than three inches up from the bottom edge; or

(C) the windshield has decorative etching that is not OEM; and

(c) check the windshield for damage, unauthorized tinting, signs, or other non-transparent materials; and

(i) issue a rejection inspection certificate when:

(A) the windshield has outright breakage, which includes shattered glass on either the inside or outside surface, or any broken glass leaving sharp or jagged edges;

(B) any crack intersects with another crack within the acute area;

(C) any damage within the acute area that cannot be covered by a disc 3/4 inch in diameter;

(D) any damage in the acute area that is within 3 inches of any other damage in the acute area;

(E) windshield allows less than 70% light transmittance or any sign, poster, or other non-transparent material is present below the AS-1 line or four inches down from the top of the windshield, whichever is lower; or

(F) any transparent material becomes obscured or impairs the drivers vision and is more than one inch in from each side edge, more than four inches down from the top edge, or more than three inches up from the bottom edge.

(d) Non-transparent material is allowed in the lower left-hand corner of the windshield provided it does not extend more than 3 inches to the right of the left edge or more than 4 inches above the bottom edge of the windshield in accordance with Section 41-6a-1635.

(2) When inspecting the windshield defroster of a vehicle, the inspector shall:

(a) verify a vehicle manufactured after January 1, 1969 is equipped with a windshield defroster system; and

(b) if applicable, turn on windshield defroster fan switch and inspect for heated air blowing over the inside of the windshield; and

(i) issue a rejection inspection certificate when:

(A) a vehicle manufactured after January 1, 1969 is not equipped with a windshield defroster system; or

(B) the defroster fan fails to function or the fan functions but a stream of heated air cannot be felt blowing against the proper area of the windshield.

(3) When inspecting the windshield wipers of a vehicle, the inspector shall:

(a) check for satisfactory operation of the windshield wipers, if vacuum operated, the engine must be idling; and

(i) advise the customer when wipers fail to return to the park position; or

(ii) issue a rejection inspection certificate when:

(A) any wiper fails to function properly, other than streaking from wiper blades;

(B) a vehicle originally equipped with two windshield wipers has been modified to use one wiper; or

(C) a vehicle manufactured after January 1968 does not have a two or more speed system;

(b) check the wiper blades for damaged, torn, or hardened rubber elements; and

(i) issue a rejection inspection certificate when the wiper blades show signs of physical breakdown of the rubber wiping element;

(c) check for damaged metal parts of wiper blades or arms; and

(i) issue a rejection inspection certificate when the wiper blades or arms are missing or damaged to the extent that they do not function properly; and

(d) check for proper contact of blades with windshield; and

(i) issue a rejection inspection certificate when a wiper blade fails to contact the windshield firmly.

(4) When inspecting the windshield washers of a vehicle, the inspector shall:

(a) verify a vehicle manufactured after May 1966 is equipped with a windshield washer system; and

(b) if applicable, check for proper operation of hand or foot control and that an effective amount of fluid is delivered to the windshield; and

(i) issue a rejection inspection certificate when:

(A) a vehicle manufactured after May 1966 is not equipped with a windshield washer system; or

(B) the windshield washer system fails to function properly, including cracked hoses, broken hoses, or if the fluid reservoir is unable to hold fluid.

(5) When inspecting the front side windows of a vehicle, the inspector shall:

(a) check the operation of the driver window and front passenger window; and

(i) advise the customer when the driver window cannot be readily opened to permit arm signals; or

(ii) issue a rejection inspection certificate when the driver or front passenger window fails to roll up;

(b) check the driver and front passenger windows for tinting or shading, scratches, discoloration, and cloudiness; and

(i) advise the customer when either the driver or front passenger window is scratched, discolored, or clouded, but the driver's view of the side mirrors is unobscured; or

(ii) issue a rejection inspection certificate when:

(A) there is any tinting or non-transparent material added to the windows to the immediate left or right of the driver's seat that allows less than 43% light transmittance;

(B) the front left and right side windows are scratched, discolored, clouded, or etched with non-OEM markings to a

level that obstructs the drivers' view of the side mirrors;

(C) the right side mirror is missing when any window is tinted; or

(D) windows are covered by or treated with a material, which presents a metallic or mirrored appearance when viewed from the outside of the vehicle;

(c) check the driver and front passenger windows for breakage; and

(i) issue a rejection inspection certificate when any glass is broken, shattered, or jagged; and

(d) check the wind deflectors, or bubbles, when present; and

(i) issue a rejection inspection certificate when a wind deflector on the driver or front passenger window is tinted to allow less than 43% light transmittance, or when deflector and window are both tinted to allow less than 43% light transmittance.

(A) This standard only applies to wind deflectors on the front left and right windows, which block driver visibility to the left and/or right outside mirror.

(6) When inspecting the rear side window of a vehicle, the inspector shall:

(a) check the windows behind the driver and passenger doors for tinting or for material that presents a metallic or mirrored appearance; and

(i) issue a rejection inspection certificate when:

(A) any window is covered by or treated with a material that presents a metallic or mirrored appearance when viewed from the outside of the vehicle;

(B) any glass is broken, shattered, or jagged;

(C) windows do not meet AS standards; or

(D) center high-mounted brake light is covered with aftermarket window tint or is not visible;

(ii) window tint limits do not apply to windows located behind the driver;

(c) check the vehicle for rearview mirrors; and

(i) issue a rejection inspection certificate when:

(A) the vehicle lacks a left rearview mirror that meets OEM standards;

(B) the vehicle has only one review mirror; or

(C) the vehicle lacks a right outside rearview mirror if the vehicle has any amount of tint on its windows.

R714-160-16. Body.

(1) When inspecting the body of a vehicle, the inspector shall:

(a) check the vehicle body for protruding metal parts, moldings, and other body parts that may protrude from vehicle, creating a hazard; and

(i) issue a rejection inspection certificate when metal, molding, or any other body part protrudes from the surface of the vehicle and creates a hazard;

(b) check parts and accessories for proper securement; and

(i) issue a rejection inspection certificate when parts or accessories are not properly secured.

(2) When inspecting bumpers of a vehicle, the inspector shall:

(a) check bumpers to ensure they meet OEM specifications in vertical height, are centered on the vehicle's centerline, connected securely to the vehicle frame, and extend the entire width of the vehicle wheel track; and

(i) issue a rejection inspection certificate when:

(A) bumpers are not 4.5 inches in vertical height;

(B) bumpers do not extend to the entire width of original body wheel track;

(C) bumpers are missing, improperly attached, broken, or have portions protruding which create a hazard; or

(D) bumpers are not made from a material that is strong enough to effectively transfer impact.

(ii) A pickup truck is required to meet the requirements of this section even though it may be sold or purchased without a rear bumper meeting OEM standards.

(iii) Roll pans are not bumpers and are only acceptable when a material is concealed behind the roll pan that meets the strength, vertical height, and securing requirements of a rear bumper.

(A) The material must extend the width of the wheel track and must meet all of the requirements of a rear bumper.

(3) When inspecting the fenders of a vehicle, the inspector shall:

(a) check for removal or alteration of front and rear fenders; and

(i) advise the customer when any fender has been removed or altered to such extent that it does not cover the entire width and upper 50% of the tire.

(4) When inspecting the seats of a vehicle, the inspector shall:

(a) check seats for proper operation of adjusting mechanism and to see that the seats are securely anchored to the floor; and

(i) issue a rejection inspection certificate when:

(A) seats are not anchored to the floorboard;

(B) the seat adjusting mechanism slips out of set position;

(C) the seat adjusting mechanism does not function properly;

(D) any driver or passenger seat back is broken or disconnected from the base so that it will not support a person's full weight;

(E) seat belts are not installed on vehicles manufactured after July 1, 1966 or are inoperative when present; or

(F) seat belts are cut, torn, frayed, or otherwise damaged; and

(b) check the motorized safety belts for proper function; and

(i) advise the customer when a motorized seat belt does not function as designed; or

(ii) issue a rejection inspection certificate when motorized seat belts fail to lock in the rear position.

(5) When inspecting the air bags of a vehicle, the inspector shall:

(a) check the Air Bag Readiness Light; and

(i) advise the customer when air bag indicator fails to light in the manner prescribed by the manufacturer, continuously flashes, remains illuminated, or if five sets of "beeps" are heard concurrent with indicator failing to light; and

(b) check the air bags; and

(i) issue a rejection inspection certificate when an air bag has been deployed or is not present when originally equipped on the vehicle.

(6) When inspecting the floorboards of a vehicle, the inspector shall:

(a) check the floorboard in both the occupant compartment and trunk for rusted areas or holes that could permit entry of exhaust gases or will not support occupants adequately; and

(i) issue a rejection inspection certificate when:

(A) any area of the floorboard is rusted through sufficiently to cause a hazard to an occupant; or

(B) exhaust gases could enter the occupant compartment or trunk; and

(b) check the space between the floor pan and frame for body lifts; and

(i) issue a rejection inspection certificate when the lowest part of body floor is raised more than three inches above the top of the frame.

(7) When inspecting the doors of a vehicle, the inspector shall:

(a) check the doors and door components for proper operation; and

(i) issue a rejection inspection certificate when:
(A) doors are missing, unless the vehicle manufacturer specially designed the doors to be removed;
(B) door parts are missing, broken, or sagging to the extent that the door cannot be opened and closed properly; or
(C) any interior and exterior door handles are not present or do not function as designed by the manufacturer.
(ii) Shaved door handles with automatic releases are allowed provided that when the engine is running and the vehicle is in drive, the wireless remote cannot activate the door release switch.
(8) When inspecting the hood of a vehicle, the inspector shall:
(a) check all vehicles for hood or engine cover; and
(i) issue a rejection inspection certificate when:
(A) the hood or engine cover is missing; or
(B) the hood is unable to be opened;
(b) check the hood and open it to check the safety catch for proper operation; and
(i) issue a rejection inspection certificate when the secondary or safety catch does not function properly;
(c) check for proper hood operation; and
(i) issue a rejection inspection certificate when the hood latch does not securely hold the hood in its proper fully closed position; and
(d) check for aftermarket hood scoop or air intake; and
(i) issue a rejection inspection certificate when:
(A) a hood scoop, air intake, or any engine component is higher than four inches above the top of the hood; or
(B) moving parts are exposed above the hood.
(9) When inspecting the frame of a vehicle, the inspector shall:
(a) check the frame and ensure that any repairs made to the frame meet OEM specifications; and
(i) issue a rejection inspection certificate when:
(A) there is any broken or cracked frame component;
(B) the frame is rusted through;
(C) the frame has been cut or portions of the frame have been removed, drilled, or bent, affecting the strength or integrity of the frame; or
(D) repairs made to the frame that do not meet OEM specifications.
(10) When inspecting the mounts of a vehicle, the inspector shall:
(a) check all mount components, including motor mounts, transmission mounts, and drive train mounts; and
(i) advise the customer when heat cracks are present; or
(ii) issue a rejection inspection certificate when:
(A) any mount bolts or nuts are broken, loose, or missing;
(B) the rubber cushion is separated from the metal plate of any mount;
(C) there is a split through the rubber cushion;
(D) the engine or transmission is sagging to the point where the mount bottoms out or there is engine misalignment to the point of a drive train component compromise; or
(E) fluid-filled mounts are leaking, leakage must be verified from the mount.
(11) When inspecting the exterior rearview mirrors of a vehicle, the inspector shall:
(a) check exterior mirrors from the driver's position for a clear and reasonably unobstructed view to the rear; and
(i) verify a driver-side mirror that meets OEM standards is equipped on a vehicle manufactured after January 1968, and the vehicle is also equipped with either an interior mirror or a passenger exterior mirror;
(ii) verify a passenger-side mirror is equipped on a vehicle with tinted windows or an obstructed rear view; and
(iii) issue a rejection inspection certificate when:
(A) the required mirrors are not present; or
(B) driver-side mirror does not meet OEM standards;
(b) Verify mirrors are in the correct location and are mounted securely; and
(c) check for cracks, sharp edges, or unnecessary protrusion; and
(i) issue a rejection inspection certificate when:
(A) mirrors are loose enough that the driver's rear vision could be impaired;
(B) mirrors are cracked, pitted, or clouded to a level that the obscures the driver's rear vision;
(C) mirrors will not maintain a set adjustment; or
(D) mirrors do not allow 200 feet of rear visibility.
(12) When inspecting the interior rearview mirror, if an interior rearview mirror is required, the inspector shall:
(a) check the mirror for proper mounting, location, cracks, sharp edges, and ease of adjustment; and
(i) issue a rejection inspection certificate when:
(A) the interior mirror is loosely mounted;
(B) the interior mirror obstructs the drivers' forward vision;
(C) the interior mirror does not provide a clear view of the highway at least 200 feet to rear;
(D) the interior mirror is cracked, broken, has sharp edges, or rear vision is obscured; or
(E) the interior mirror will not maintain a set adjustment.
(13) When inspecting the speedometer of a vehicle, the inspector shall:
(a) check the vehicle to ensure that it is equipped with a properly functioning speedometer; and
(i) advise the customer when the speedometer is not functioning properly.

R714-160-17. Exhaust System.
(1) The inspector shall examine the vehicle's exhaust system and comply with the following requirements:
(a) check the manifold, exhaust or header pipe, mufflers, tail pipes, and the supporting hardware; and
(i) issue a rejection inspection certificate when:
(A) the muffler is missing;
(B) the exhaust system has leaks of any kind on any part of the system, excluding drain holes installed by the manufacturer.
(C) any part of the system is not securely fastened or is secured in a manner that is likely to fail, such as using a rope to secure the tail pipe;
(D) the tail pipes do not extend beyond the outer periphery of the passenger compartment, discharge at any point forward of the passenger compartment, or are severely bent or broken;
(E) the exhaust system passes through any occupant compartment;
(F) a muffler cutout or similar device is installed on the vehicle;
(G) any part of the exhaust system that is located or exposed in a manner that a person will likely be burned or injured; or
(H) any part of the exhaust system is located so that it would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

R714-160-18. Fuel System.
(1) If the fuel system uses diesel or gasoline, the inspector shall:
(a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, and fuel filler; and
(i) issue a rejection inspection certificate when:
(A) there is fuel leakage at any point or there are escaping gases detected in the system;

(B) the fuel tank filler cap is missing;

(C) any part of the system is not securely fastened or supported;

(D) there is physical damage to any fuel system component; or

(E) the crossover line is not protected and drops more than two inches below fuel tanks.

(2) If the fuel system uses liquid propane gas, the inspector shall:

(a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, fuel filler cap, and conversion kit installations;

(b) check for leaks by using the soap test with antifreeze;

(c) check that the fuel container is installed in a way to prevent it from jarring loose, slipping, or rotating;

(d) check that containers are located to minimize the possibility of damage to the container and its fittings;

(e) check that containers located less than 18 inches from the exhaust system, the transmission, or a heat-producing component of the internal combustion engine are shielded by a vehicle frame member or by a noncombustible baffle with an air space on both sides of the frame member or baffle;

(f) check that the piping system is installed, supported, and secured in such a manner as to minimize damage due to expansion, contraction, vibration, strains, and wear;

(i) protection to the piping system may be achieved by parts of the vehicle furnishing the necessary protection, a fitting guard furnished by the manufacturer of the container, or by other means to provide equivalent protection;

(g) check that container valves, appurtenances, and connections are protected to prevent damage from accidental contact with stationary objects or from stones, mud, ice, and from damage from the vehicle's overturn or similar accident;

(h) For a tank installed inside a passenger compartment, check that it is installed in an enclosure that is securely mounted to the vehicle, such as a trunk which is gas-tight with respect to the passenger compartment and is vented to the outside of the vehicle;

(i) check that manual shutoff valves provide positive closure under service conditions, are equipped with an internal excess-flow check valve designed to close automatically at the rated flows of vapor, stop all flow to and from the container when put in the closed position, and are readily accessible without the use of tools or other equipment. A check valve will not meet this requirement; and

(j) issue a rejection inspection certificate when:

(i) there is fuel leakage at any point or there are escaping gases detected in the system;

(ii) the fuel tank filler cap is missing;

(iii) any part of the system is not securely fastened, supported, or the tank valve is not shielded;

(iv) there is physical damage, such as excessive denting, corrosion, bulging, or gouging to any fuel system component;

(v) the fuel lines have any corrosion;

(vi) welding is present, with the exception of being on saddle plates, lugs, pads or brackets that are attached to the container by the container manufacturer;

(vii) excessive surface rust is present on the tank or tank paint coating is in poor condition;

(viii) there is any installation hazard present that may cause a potential hazard during a collision;

(ix) a container is mounted directly on the roof, or ahead of the front axle or beyond the rear bumper of a vehicle;

(x) a container or its appurtenance protrudes beyond the sides or top of the vehicle;

(xi) the vehicle does not have a weather-resistant, diamond shaped label located on the right rear of the vehicle identifying the vehicle as a 'PROPANE' fueled vehicle;

(xi) a data plate or saddle plate is not present or is not legible on a propane tank;

(xii) any aftermarket data plates are welded on the tank; or

(xiii) a check valve is used for a manual shutoff valve.

(3) American Society of Mechanical Engineers "ASME" containers are installed permanently to vehicles and are not subject to the DOT inspection requirements.

(4) All liquefied propane gas containers fabricated to earlier editions of regulations, rules, or codes listed in NFPA 5.2.1.1 and of the Interstate Commerce Commission "ICC" Rules for Construction of Unified Pressure Vessels, prior to April 1, 1967, shall be permitted to continue to be used in accordance with Section 1.4 of NFPA.

(5) Containers that have been involved in a fire and show no distortion shall be re-qualified by a manufacturer of that type of cylinder or by a repair facility approved by DOT, before being used or reinstalled.

(6) When inspecting a fuel system that uses either CNG or liquefied natural gas, the inspector shall:

(a) check the fuel tank, fuel tank support straps, filler tube, tube clamps, fuel tank vent hoses or tubes, filler housing drain, overflow tube, fuel filler cap, and conversion kit installations;

(b) check the tank to verify it is protected from physical damage using the vehicle structure, valve protectors or a suitable plastic or metal shield;

(c) check that fuel tank shields do not have direct contact with fuel tanks and prevent trapping of materials that could damage the tanks or its coatings;

(d) for fuel tanks installed above, below, or within the passenger compartment, check to verify connections are external or sealed and vented from the compartment;

(e) for fuel tanks installed within the passenger compartment, check to verify tanks are vented to the outside of the vehicle with a boot or heavy plastic bag and shall not exit into a wheel well;

(f) check tanks and fuel lines to verify mounting and bracing is away from the exhaust system and supported to minimize vibration and to protect against damage, corrosion, or breakage;

(g) check for identification with a weather-resistant, diamond-shaped label located on an exterior vertical surface or near-vertical surface on the lower right rear of the vehicle, excluding the bumper, inboard from any other markings;

(i) the label shall be a minimum of 4.72 inches long by 3.27 inches high;

(h) check that when a manual valve is used, the valve location is accessible, indicated with the words "MANUAL SHUTOFF VALVE";

(i) check that the vehicle bears in the engine compartment a label readily visible identification as a CNG-fueled vehicle, system service pressure, installer's name or company, container retest dates or expiration date, and the total container water volume in gallons;

(j) check for a label located at the fueling connection receptacle with identification as a CNG-fueled vehicle, system working pressure, and container retest dates or expiration date;

(k) check that CNG fuel containers are permanently labeled;

(i) disassembly of the tanks protective shield is not required to verify the label on the tank;

(ii) it is the vehicle owner's responsibility to provide documentation for a current CNG tank Inspection from a CNG certified inspector; and

(iii) the documentation must identify the vehicle and list the CNG tank certification number; and

(l) visually inspect CNG fuel containers for damage and deterioration; and

(i) issue a rejection inspection certificate when:

(A) there is fuel leakage at any point or escaping gases are detected in the system, odor will be present;

(B) the fuel tank filler cap or cover is missing;
(C) any part of the system is not securely fastened, supported, or shielded to prevent damage from road hazards, slippage, loosening, or rotations;
(D) the fuel tank is exposed or unprotected;
(E) tanks that are installed under a vehicle are mounted ahead of the front axle or behind the point of attachment of the rear bumper;
(F) there is any physical damage to a fuel system component;
(G) there is any installation hazard present that may cause a potential hazard during a collision;
(H) any part of the fuel tank or its appurtenances protrudes beyond the sides or top of any vehicle where the tanks can be struck or punctured;
(I) the vehicle is not labeled as described in Subsection C of this section or in accordance with National Fire Protection Association Pamphlet 52; or
(J) a CNG fuel container is not current with its certification in accordance with Federal Motor Vehicle Safety Standards.

R714-160-19. Trailers.
(1) Light duty trailers or any trailer, regardless of GVWR, used in the capacity of a commercial motor vehicle as defined in Federal Motor Carrier Safety Regulations shall be inspected per procedures found in Rule R714-162, Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections.
(a) These inspections shall only be performed by personnel certified in Tractor/Trailer/Bus categories.

R714-160-20. Off-Highway Vehicles.
(1) The inspector shall check vehicles that have been modified for off-road use for compliance with the safety inspection rules, Utah state law, and federal motor vehicle safety standards:
(a) the inspector shall issue a rejection inspection certificate when:
(i) a vehicle does not meet all inspection requirements for a regular passenger vehicle;
(ii) a vehicle does not provide an enclosure or cockpit for the driver and occupants; or
(iii) the vehicle has a Baja or T-bar style bumper.

R714-160-21. Vintage Vehicles, Custom Vehicles, and Replica Vehicles.
(1) The following are minimum safety equipment requirements for a custom vehicle:
(a) hydraulic service brakes on all wheels with current vehicle brake and stopping standards;
(b) parking brake operating on at least two wheels on the same axle;
(c) seat belts for all passengers and driver;
(d) sealed beam or halogen headlamps;
(e) brake Lamps;
(f) turn signal lamps and switch;
(g) AS-1 safety glass or Lexan; and
(h) electric or vacuum windshield wiper in front of the drivers view.
(2) The inspector shall issue a rejection inspection certificate when any of the above requirements are not met.
(3) Exhaust systems may discharge along the side of the vehicle provided they discharge at a point behind the rear edge of the door and exhaust is directed away from the vehicle.
(4) The vehicle identification for a custom vehicle shall be a number stamped on the frame of the vehicle.
(a) If no such numbers exist, then the requirements as established pursuant to Rule R873-22M-15 must be followed in order to pass inspection.
(5) All safety equipment of a replica vehicle shall comply with the requirements in Subsection 41-6a-1507(3).

R714-160-22. Low-Speed Vehicles.
(1) A low-speed vehicle shall meet the requirements found in Section 41-6a-1508.
(a) The inspector shall issue a rejection inspection certificate when any of the requirements in Section 41-6a-1508 or 49 C.F.R. 571.500 are not met.

R714-160-23. Reconstructed/Salvaged Motor Vehicles.
(1) Safety inspection for a salvaged vehicle is required as stated in Subsection 53-8-205(1)(a).
(2) The inspector shall check all components and follow the requirements in this Rule.
(a) The inspector shall issue a rejection inspection certificate when any components and repairs are not made or installed in accordance with applicable provisions for the particular chassis from the original manufacturer.

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R746. Public Service Commission, Administration.
R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).
R746-8-100. Authority, Purpose, and Organization.

(1) This rule is adopted under:
(a) Utah Code Section 54-8b-10; and
(b) Utah Code Section 54-8b-15.
(2) This rule:
(a) governs the methods, practices, and procedures by which:
(b) the UUSF is created, maintained, and funded; and
(c) funds are disbursed from the UUSF to qualifying access line providers.
(3) This rule is organized into the following Parts:
(a) Part 100: Authority, Purpose and Organization;
(b) Part 200: Definitions;
(c) Part 300: UUSF Funding; and
(d) Part 400: UUSF Distributions.

R746-8-200. Definitions.

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1), and is used in this rule, R746-8, 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) and is used in this rule, R746-8, to the extent consistent with federal law.
(c)(i) Providers of access lines and functionally equivalent connections are hereafter referred to jointly as "providers."
(ii) Access lines and connections are hereafter referred to jointly as "access line" or "access lines."
(2)(a) "Affordable base rate" or "ABR" means the monthly retail rate that a rate-of-return regulated provider is required to charge on a per-access line basis in order to receive ongoing disbursements from the UUSF.
(b) "Affordable base rate" may include, if itemized in the provider's Commission-approved tariff:
(i) the applicable UUSF surcharge;
(ii) mandatory extended area service fees; or
(iii) state subscriber line fees.
(c) "Affordable base rate" does not include:
(i) municipal franchise fee(s);
(ii) tax(es); or
(iii) any incidental surcharge(s) other than those identified in R746-8-200(2)(b):
(A) included in a Commission-approved tariff; or
(B) authorized under these rules.
(3) "Broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).
(4) "Carrier of last resort" is defined at Utah Code Subsection 54-8b-15(1).
(5) "Eligible telecommunications carrier" or "ETC" means a provider that, if seeking to participate in the state Lifeline program:
(a) is designated as an eligible telecommunications carrier by the commission in accordance with 47 U.S.C. Section 214(e); or
(b) is designated by the FCC as a Lifeline Broadband Provider (LBP).
(6) "Designated support area" means the geographic area used to determine a provider's UUSF support distribution, including, at a minimum, the provider's entire certificated service territory located in the State of Utah.
(7) The acronym "FCC" means the Federal Communications Commission.
(8) "Facilities-based provider" means a provider that uses:
(a) its own facilities;
(b) essential facilities or unbundled network elements obtained from another provider; or
(c) a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.
(9)(a) "Household" means any individual or group of individuals living together at the same address as one economic unit.
(b) "Economic unit" means all adult individuals contributing to and sharing in the income and expenses of a household.
(10) "Lifeline subscriber" means an individual who qualifies for state subsidization of an access line through participation in a program for low-income individuals that is recognized by the FCC.
(11) "Non-rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).
(12) "Rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).
(13) "Wholesale broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).

R746-8-300. UUSF Funding.

The following sections in the 300 series address UUSF Funding.

R746-8-301. Calculation and Application of UUSF Surcharge.

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:
(a) Unless Subsection R746-8-301(3) 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)(i) 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.
(ii) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).
(iii)(A) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.
(B) $0.36 per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(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.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), 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;

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services; or

(iii) subject to R746-8-403(5), receives subsidization through a federal Lifeline program approved by the FCC.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to each Subsection R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

R746-8-302. UUSF Surcharge Remittances.

Providers shall remit surcharge assessments to the Commission as follows:

(1) If, over a period of six months, the average monthly UUSF surcharge assessments total $1,000 or more, the provider shall remit the funds:

(a) on a monthly basis; and

(b) within 45 days of the last calendar day of each month.

(2) If, over a period of six months, the average UUSF surcharge assessments are less than $1,000 per month, the provider shall accrue the UUSF surcharge assessments and submit the accrued assessments every six months.

R746-8-400. UUSF Distributions.

The following sections in the 400 series address UUSF Distributions.

R746-8-401. Rate-of-Return Regulated Providers.

(1) A rate-of-return regulated provider is eligible for ongoing UUSF support pursuant to Utah Code Section 54-8b-15 if the provider:

(a) is a carrier of last resort;

(b) is in compliance with Commission orders and rules;

(c) unless a petition brought pursuant to Subsection R746-8-401(2) is granted after adjudication, charges, at a minimum, $18 per access line;

(d) offers Lifeline service on terms and conditions prescribed by the Commission;

(e) operates as a facilities-based provider, not a reseller; and

(f) in compliance with R746-8-401(3), demonstrates through an adjudicative proceeding that its costs as established in Utah Code Section 54-8b-15 exceed its revenues as established in Utah Code Section 54-8b-15.

(2)(a) A rate-of-return regulated provider may petition the Commission to deviate from the affordable base rate set forth in Subsection R746-8-401(1)(c).

(b) A rate-of-return regulated provider that files a petition to deviate from the affordable base rate shall:

(i) demonstrate that the affordable base rate is not reasonable in the provider's designated support area; or

(ii) impute income up to the affordable base rate in calculating the provider's UUSF disbursement.

(3) The calculation of a rate-of-return regulated provider's ongoing UUSF distribution shall conform to the following standards:

(a) The provider's state rate-of-return shall be equal to the weighted average cost of capital rate-of-return prescribed by the FCC for rate-of-return regulated carriers, as of the date of the provider's application for support, and as follows:

(i) beginning July 1, 2016: 11.0%

(ii) beginning July 1, 2017: 10.75%;

(iii) beginning July 1, 2018: 10.5%;

(iv) beginning July 1, 2019, 10.25%;

(v) beginning July 1, 2020, 10.0%; and

(vi) beginning July 1, 2021, 9.75%.

(b) The provider's depreciation costs shall be calculated as established in Utah Code Section 54-8b-15.

(4) Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement, the Division shall make a recommendation of whether each provider's monthly distribution should be adjusted according to:

(a) the current FCC rate-of-return as set forth in R746-8-401(3)(a); and

(b) the provider's financial information from its last Annual Report filed with the Commission.

R746-8-402. Non-rate-of-return Regulated Providers.

(1) A non-rate-of-return regulated provider may be eligible for ongoing UUSF support for the deployment and management of networks capable of providing access lines, connections, or broadband internet access, upon application to the Commission, if the provider:

(a) is a carrier of last resort; and

(b) is in compliance with Commission orders and rules.

(2) Upon receipt of an application brought under R746-8-402, the Commission shall establish the appropriate criteria for the entitlement to, and the disbursement of, UUSF funds to non-rate-of-return regulated providers.

R746-8-403. Lifeline Support.

(1) In addition to any disbursement calculated under R746-8-401 or R746-8-402, an ETC may receive an ongoing distribution through ongoing participation in a Commission-approved Lifeline program upon a specific finding of public interest by the Commission.

(2)(a) The support claimed under this Subsection R746-8-403 may not exceed $3.50 per Lifeline subscriber per month of subscription to a service that:

(i) provides service over landlines; or

(ii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) for wireless Lifeline, allows, at no charge beyond the basic monthly fee, unlimited texting and at least 750 voice minutes per month; or

(iii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) does not include a voice component.

(b) Lifeline distributions will be based on eligible Lifeline subscribers as of the first day of each month, with no prorated discounts.

(3) An ETC that is approved to participate in the Commission Lifeline program shall:

(a) provide potential Lifeline subscribers with application materials and information;

(b) provide service to any customer who is verified as eligible for participation through:

(i) the FCC's national verifier system; or

(ii) if the FCC's national verifier system is not yet operational, the program administrator with which the Commission contracts to administer the initial and continued eligibility verification of state Lifeline participants;

(c) waive, for Lifeline subscribers, the following charges:

(i) customer security deposits, if the customer voluntarily elects to receive toll blocking; and

(ii) within any 12-month period, the first nonrecurring service charge for:

(A) changing local exchange usage service to Lifeline service; and

(B) changing from flat rate service to message rate service; and

(d)(i) add the Lifeline discount to a customer's account within five (5) business days of notification of the customer's eligibility under FCC Lifeline requirements; and;

(ii) remove the Lifeline discount from a Lifeline subscriber's account within five (5) business days of notification of the Lifeline subscriber's ineligibility under FCC Lifeline requirements; and

(e) submit to the Division by May 1 of each year, a complete Lifeline subscriber list, as defined by the FCC.

(4) An ETC participating in the Commission Lifeline program may not:

(a) disconnect Lifeline telephone service for nonpayment of toll service;

(b) require a Lifeline subscriber to purchase additional services from the ETC; or

(c) prohibit a Lifeline subscriber from purchasing additional services from the ETC, unless the participant fails to comply with the ETC's terms and conditions for those additional services.

(5) For an access line for which the UUSF surcharge is omitted pursuant to R746-8-301(3)(a)(iii), the UUSF surcharge amount that otherwise would have been remitted pursuant to R746-8-301 shall be deducted from the state Lifeline support paid to the provider.

R746-8-404. One-time UUSF Distribution.

A non-rate-of-return regulated carrier of last resort may apply for a one-time UUSF distribution pursuant to Utah Code Subsection 54-8b-15(3)(d).

R746-8-405. UUSF Support for Deaf, Hard of Hearing, or Severely Speech Impaired Person.

(1) This rule governs a program to provide telecommunication devices and services to qualifying deaf, hard of hearing, or severely speech impaired persons

(2) Definitions.

(a) "Applicant" means a person applying for:

(i) a telecommunication device for the deaf, hard of hearing, or severely speech impaired;

(ii) a signal device; or

(iii) another assistive communication device.

(b) "Audiologist" means a person who:

(i)(A) has a master's or doctoral degree in audiology; or

(B) is licensed in audiology in Utah; and

(ii) holds a Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association or its equivalent.

(c) "Deaf" means hearing loss that requires the use of a TDD to communicate effectively on the telephone.

(d). "Hard of hearing" means hearing loss that requires use of a TDD to communicate effectively on the telephone.

(e) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat medicine.

(f) "Recipient" means a person who is approved to receive a TDD, signal device, personal communicator, or other assistive communication device.

(g) "Speech language pathologist" means a person who:

(i) has a master's or doctoral degree in Speech Language Pathology; and

(ii) holds a Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association or its equivalent.

(h) "Severely Speech Impaired" means a speech handicap or disorder that renders speech on an ordinary telephone unintelligible.

(i) "Signal device" means a mechanical device that alerts a deaf, deaf-blind, or hard of hearing person of an incoming telephone call.

(j) "Telecommunications Device for the Deaf" or "TDD" means an electrical device for use with a telephone that utilizes:

(i) a key board;

(ii) an acoustic coupler;

(iii) a display screen;

(iv) a braille display; or

(v) a tablet device or unlocked cellular telephone that is equipped with applications that allow a user to transmit and receive messages.

(3) Eligibility.

(a) At a minimum, an applicant shall demonstrate that the applicant:

(i) lives within the State of Utah;

(ii) is

(A) deaf;

(B) hard of hearing; or

(C) severely speech impaired;

(iii)(A) receives assistance from a low-income public assistance program administered by a state agency; or

(B) has an income of 200% of the Federal Poverty Guideline or less for the current year; and

(iv) is able to send and receive messages with a TDD or other appropriate assistive device.

(b) Qualification under Subsection R746-8-405(3)(a)(ii) shall be established by the certification of:

(i) a person who is licensed to practice medicine;

(ii) an audiologist;

(iii) an otolaryngologist;

(iv) a speech/language pathologist; or

(v) qualified personnel within a state agency.

(4) Distribution process.

(a) If approved by the Commission to receive an assistive device, the applicant shall:

(i) unless Subsection R746-8-405(4)(b) applies, sign an agreement and conditions of acceptance form supplied by the Commission; and

(ii) report, as instructed by the Commission, for training and receipt of the approved device.

(b) If the recipient is a minor or is unable to sign the agreement and conditions of acceptance form, the recipient's legal guardian may sign.

(5) Ownership and Liability.

(a)(i) An assistive device provided under this rule remains the property of the State of Utah.

(ii) A recipient shall not remove an assistive device from the state of Utah for a period of time longer than 90 days unless the recipient obtains the written consent of the Commission.

(b) A recipient shall be solely responsible for the costs of:

(i) repair of an assistive device, other than for normal wear and tear;

(ii) replacement of an assistive device;

(iii) paper required by an assistive device;

(iv) telephone and internet service; and

(v) light bulbs required by an assistive device.

(c) If an assistive device requires repair, the recipient shall return it to the Commission and may not make private

arrangements for repair.

(6) Termination of Use. A recipient, or if applicable, the recipient's guardian, shall return an assistive device to the Commission if the recipient:

(a) no longer intends to reside in Utah;

(b) becomes ineligible pursuant to R746-8-405(3); or

(c) is notified by the Commission to return the device.

R746-8-405a. New Technology Equipment Distribution Program (NTEDP).

(1) Authority and Purpose.

(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).

(b) The purposes of the NTEDP are:

(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, hard of hearing, and severely speech-impaired communities;

(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and

(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.

(2) Duration. The NTEDP shall terminate no later than December 31, 2021.

(3) Participation.

(a) An individual who wishes to participate in the NTEDP shall:

(i) submit a completed application form to the Relay Utah office;

(ii) provide medical documentation of:

(A) deafness;

(B) hardness of hearing; or

(C) severe speech impairment;

(iii) demonstrate that:

(A) the individual is receiving assistance from a low-income public assistance program administered by a state agency; or

(B) has an income of 200% of the Federal Poverty Guideline or less for the current year;

(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or

(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and

(v) certify that the individual is able and willing to comply with Subsection (4).

(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.

(c) An applicant who is not selected to participate may request to be placed on a waiting list.

(d) Participation shall be limited to ten additional participants in each six-month period of the pilot program.

(4) Participant obligations.

(a) An individual who is chosen to participate in the NTEDP shall:

(i) participate in an entrance interview with the Relay Utah office;

(ii) complete online surveys as instructed by the Relay Utah office;

(iii) promptly comply with all instructions from the Relay Utah office to download apps;

(iv) promptly respond to requests from the Relay Utah office for information and feedback;

(v) maintain the device in the storage case provided;

(vi) retain all original device packaging, instructions, and information;

(vii) contact the manufacturer's customer service department for assistance with technical support;

(viii) promptly report to the Relay Utah office:

(A) software and hardware failures; and

(B) damage to the device;

(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and

(x) immediately return the device to the Relay Utah office if the individual:

(A) moves from the State of Utah;

(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or

(C) chooses to terminate the individual's participation in the NTEDP.

(b) An individual who is chosen to participate in the NTEDP may not:

(i) reformat or attempt to reformat the device;

(ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or

(iii) install software, apps, or other programs not authorized by the Relay Utah office.

(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.

(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.

KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology

December 24, 2018 **54-3-1**
54-4-1
54-8b-15
54-8b-10

R746. Public Service Commission, Administration.
R746-350. Application to Discontinue Telecommunications Service.
R746-350-1. Purpose and Authority.

A. Authorization -- Section 54-4-1 provides that the Public Service Commission shall have the power to regulate utilities and to supervise their business operations. Section 54-3-1 requires that the terms and conditions of the provision of service be just and reasonable.

B. Purpose -- This rule is intended to address situations where a telecommunications corporation has determined to stop providing Basic Telecommunications Service to subscribed customers in a Utah service area. The rule will provide subscribed customers an opportunity to migrate their service to an alternative service or a different provider prior to the Exiting Provider's discontinuance of the subscribed service. No telecommunications corporation may discontinue the provision of Basic Telecommunications Service to existing customers in a service area, or portions thereof, without first complying with this rule or receiving an exemption from the Commission.

R746-350-2. Definitions.

Terms -- The meaning of the terms used in this rule shall be consistent with their general usage in the telecommunications industry, Title 54 of the Utah Code or as defined below:

A. "Basic Telecommunications Service" means the telecommunications services defined as Basic Telecommunications Service in Rule 746-360-2.C.

B. "Commission" means the Public Service Commission of Utah.

C. "Division" means the Division of Public Utilities.

D. "Exiting Provider" means a telecommunications corporation that seeks to stop or eliminate providing Basic Telecommunications Service to subscribed customers in a service area, or portion thereof, located in Utah. It does not include a telecommunications corporation that discontinues telecommunications service as a result of the customer's request or pursuant to the provisions of other rules or orders of the Commission. It does not include a temporary change in the provision of service that may arise from maintenance, repair or failure of a telecommunications corporation's equipment or facilities.

E. "Intended Date of Discontinuance" means the date upon which an Exiting Provider intends to discontinue providing Basic Telecommunications Service pursuant to this rule.

F. "Replacement Provider" means a telecommunications corporation that undertakes providing Basic Telecommunications Service to customers of the Exiting Provider after the Exiting Provider is permitted to discontinue service.

R746-350-3. Application and Notice.

A. Application -- Unless subject to R746-350-4.E for exclusive facilities, an Exiting Provider shall file an application with the Commission and the notices identified hereafter not less than 50 days prior to the Intended Date of Discontinuance.

B. Notices -- An Exiting Provider shall provide written notice to the following:

1. the Division;

2. subscribed customers that will be affected by the discontinuance of service;

3. telecommunications corporations providing the Exiting Provider with resold telecommunications services, essential facilities or services, or unbundled network elements (UNEs), if they are part of or used to provide Basic Telecommunications Service to the Exiting Provider's affected customers; and

4. the national number administrator, when applicable, authorizing the release of all unassigned telephone numbers unless the Exiting Provider establishes a need to retain the telephone numbers.

R746-350-4. Application and Notice Contents.

A. Application -- The application to the Commission required by R746-350-3.A must include:

1. applicant's name, complete mailing address, including street, city, state, and zip code, telephone number, e-mail address, and the names under which the applicant is providing telecommunications service in Utah;

2. name, mailing address, telephone number and e-mail address of a person or persons, designated by the Exiting Provider, to contact for questions about the application;

3. identification of the associated service territory, or portion thereof, proposed for discontinuance;

4. the Intended Date of Discontinuance, which shall not be sooner than 50 days after the date on which the Exiting Provider files the application with the Commission;

5. acknowledgment that by signing the application, the applicant and its successors understand and agree that:

a. filing of the application does not, by itself, constitute authority to discontinue any service;

b. discontinuance shall occur as ordered by the Commission; and

c. the Exiting Provider shall assist in the porting of any assigned telephone numbers to a Replacement Provider.

6. an affidavit signed by an officer or principal of the Exiting Provider attesting under penalty of perjury that the contents of the application are true, accurate, and correct; and

7. a copy of the notices required in this rule.

B. Notice to the Division -- The notice to the Division required in R746-350-3.B.1 shall be a copy of the application submitted to the Commission.

C. Notice to Customers -- The notice to customers required in R746-350-3.B.2 must, at a minimum, include:

1. the Intended Date of Discontinuance on which Basic Telecommunications Service is planned to be discontinued; and

2. information on how to contact the Exiting Provider by telephone in order to obtain information such as how customers may receive a refund on any unused service or how to contact regulatory agencies to obtain information on possible replacement providers. The Exiting Provider shall continue to provide refund information, via a customer service number, for 60 days after the date of discontinuance of service;

D. Notice to Other Companies -- The notice to other companies required in R746-350-3.B.3 must, at a minimum, include:

1. the Intended Date of Discontinuance of Basic Telecommunications Service; and

2. telephone contact information to enable other companies to obtain additional information regarding the discontinuance of service.

3. Until chosen as the Replacement Provider, telecommunications corporations receiving notices under R746-350-3.B.3 may not use information contained in the notices to initiate marketing efforts unless the information is first made available to other telecommunications corporations for their marketing efforts.

E. Earlier Notice for Exclusive Facilities -- Notwithstanding the requirements set forth in R746-350-3.A and R746-350-4.A.4, if an Exiting Provider has ownership or control of the only facilities readily available to provide Basic Telecommunications Service to customers so that another telecommunications corporation would either need to acquire control of those facilities or install its own facilities in order to serve the customers of the Exiting Provider, then the following shall be required:

1. The Exiting Provider shall provide notice to the Commission, the Division and to telecommunications corporations identified in the Commission's list of certificated

telecommunications companies at least 120 days prior to its Intended Date of Discontinuance. The notice shall grant other telecommunications corporations 40 days to respond indicating any interest in obtaining the facilities and their transfer.

2. The Exiting Provider shall file its application to discontinue service with the Commission at least 75 days prior to the Intended Date of Discontinuance.

3. The Commission shall determine the timing of any further proceedings, including the timing of further notices.

F. Notice to the National Number Administrator -- Unless the Exiting Provider has established a need to retain the telephone numbers, the notice required in R746-350-3.B.4 shall include identification of all telephone numbers assigned to customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers will be available for reassignment.

R746-350-5. Commission Proceedings upon Application to Discontinue Service.

A. Proceeding -- The Commission will act upon an application to discontinue service within the time period ending on the Intended Date of Discontinuance. If an Exiting Provider fails to comply with this rule and customers have not had an adequate opportunity to obtain a replacement telecommunications service or locate a Replacement Provider, if one exists, the Exiting Provider may be required to continue to provide service until the earlier of: the date on which a Replacement Provider is able to provide service, or a date ordered by the Commission. The Commission may use the proceedings on an Exiting Provider's application to resolve disputes between the Exiting Provider and a possible Replacement Provider to facilitate the migration of the Exiting Provider's customers to alternative telecommunications services that may be available. The Commission may use the proceeding to address requirements of R746-349-5, Utah Code Section 54-8b-18, or any other requirements associated with a change in service providers.

B. Liability -- Nothing in this rule, however, shall be construed as shielding the Exiting Provider from any legal liability to its customers or any other person or entity, whether the liability is grounded in contract, tort or otherwise, including any obligation for any interconnection payment required to maintain service to the Exiting Provider's customers.

C. Rates or Terms -- Nothing in this rule shall require the Replacement Provider to provide any service at rates or on terms other than those published in the Replacement Provider's tariffs, price lists, or contract with the customer.

D. Obligation -- Nothing in this rule obligates the Replacement Provider to undertake any obligation of the Exiting Provider. To the contrary, unless expressly agreed in writing or ordered by the Commission, it shall be presumed that the Replacement Provider has not undertaken any obligation of the Exiting Provider.

KEY: exiting provider, replacement provider, telecommunications, services
January 15, 2004 54-4-1
Notice of Continuation December 31, 2018 54-3-1

R746. Public Service Commission, Administration.
R746-450. Procedural and Informational Requirements for Solar Resource Solicitations and Acquisitions.
R746-450-1. Definitions.

(1) "Acquire," "Acquiring," or "Acquisition" means to purchase, construct, or purchase the output from a photovoltaic or thermal solar energy resource under an agreement that includes a purchase option.

(2) "All Customers" means customers of a Qualified Utility that are not contracting with that utility under Utah Code Sections 54-17-803 or 54-17-806.

(3) "All Customers Solicitation" means a Solar Solicitation pursuant to 54-17-807(3)(c)that will solicit Solar Resources with a rated generating capacity of less than or equal to 300 megawatts that will be used in whole, or in part, to supply All Customers.

(4) "All Customers Large Solicitation" means a Solar Solicitation pursuant to 54-17-807(3)(d) that will solicit Solar Resources with a rated generating capacity of more than 300 megawatts and that will be used in whole, or in part, to supply All Customers.

(5) "Qualified Utility" is defined under Utah Code Section 54-17-801(2).

(6) "Solar Solicitation" means a solicitation that includes a Solar Resource pursuant to Utah Code Section 54-17-807.

(7) "Solar Resource" means a solar photovoltaic or thermal solar energy facility.

(8) "Specific Customer Solicitation" means a Solar Solicitation pursuant to 54-17-807(3)(a) and (b) for a customer of a Qualified Utility that meets the requirements of either Utah Code Section 54-17-803 or Utah Code Section 54-17-806.

R746-450-2. Applicability.

(1) This rule applies to qualified utility applications for Commission approval of:

(a) a solar solicitation that may result in the qualified utility's acquisition of a solar resource using rate recovery based on a competitive market price; and

(b) a qualified utility's acquisition of a solar resource resulting from a solar solicitation approved under these rules, whether the resource will be solely or jointly owned, only if the qualified utility seeks rate recovery based on a competitive market price.

(2) This rule does not apply to a qualified utility's acquisition of solar resources located on the customer's side of the meter that have a rated generating capacity of less than two megawatts.

(3) Except as otherwise specified in this rule, the requirements of Parts 1 through 5 of the Energy Resource Procurement Act (Utah Code Section 54-17-101 through Section 54-17-501) and Commission rules R746-420-1 through R746-420-6; R746-430-1 through R746-430-4; and R746-440-1 through R746-440-3, do not apply to applications for approval under this rule.

R746-450-3. Requests for Solar Solicitation Approvals.

(1) A qualified utility that seeks to acquire a solar resource using rate recovery based on a competitive market price shall file an application with the Commission for approval of a solar solicitation that includes the following:

(a) a description of the solicitation process the qualified utility proposes to use, including an explanation of the customer(s) on whose behalf the solicitation is proposed and the manner in which the solicitation will be published;

(b) a copy of the complete proposed solar solicitation with any appendices, attachments and draft pro forma contracts;

(c) information sufficient to demonstrate that the filing complies with the requirements of Utah Code Section 54-17-807 and Commission rules;

(d) descriptions of the criteria and the methods to be used to evaluate bids, including the weighting and ranking factors to be used to evaluate bids, and explanation of the extent to which grid services frequency regulation, spinning reserves, and/or ramp control that the resource is capable of providing in addition to energy and/or capacity will be considered or evaluated;

(e) other than for a solar solicitation administered by a customer, information directing interested parties to all questions and answers regarding the solar solicitation and solicitation process posted on an appropriate website;

(f) the qualified utility's proposed cost accounting for management of the solar solicitation;

(g) if the solar solicitation is intended to solicit resources for more than one customer in a specific customer solicitation, or a specific customer solicitation will be combined with an all customers solicitation or an all customers large solicitation, the following shall also apply:

(i) the solicitation will include a proposal for how the resources or the output from resources will be apportioned to the various customers; and

(ii) in addition to combined pricing for a portion, or all of, the requested quantity, the solicitation must allow bidders to place separate bids for customers that meet the requirements of Utah Code Section 54-17-803, customers that meet the requirements of Utah Code Section 54-17-806, and all customers, each to the extent included in the solicitation.

(h) For a specific customer solicitation or all customers solicitation that a qualified utility will either administer, or participate in bid evaluation or selection for, a description of the qualified utility's proposal for:

(i) how the qualified utility's personnel involved in evaluating bids and the qualified utility's personnel involved in preparing bids to the solicitation from the qualified utility will be prevented from sharing information in a manner that may lead to unfair advantage or the perception of unfair advantage in the selection of a solar resource; and

(ii) how the qualified utility will avoid its involvement in bid evaluation or selection from being affected by bias.

(i) Any other information the Commission may require.

(2) Solar Solicitation Approval Process.

(a) For a specific customer solicitation that is not combined with an all customers solicitation or an all customers large solicitation:

(i) the qualified utility shall also include in its application information sufficient for the Commission to make the following determinations:

(A) that the solar solicitation and bid evaluation will create a level playing field that will allow fair competition between the qualified utility and other bidders;

(B) that, excluding applicable requirements of the qualified utility's federally regulated transmission function, the interconnection and transmission related requirements and conditions will be equally applicable to the qualified utility and other bidders;

(C) that projects proposing to interconnect or deliver to various locations on the qualified utility's transmission system will have a fair opportunity to bid and have the impacts of the interconnection or delivery locations objectively considered in the selection process, provided that solicitation parameters requested by specific customers may limit interconnection or delivery locations; and

(D) that the solar solicitation is in the public interest.

(ii) the Commission shall provide public notice of the application. Interested parties may file comments on the application within 30 days of the notice. Interested parties shall have 15 days to respond to any comments, and, unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will

issue an order within 60 days of the application.

(b) For an all customers solicitation, including an all customers solicitation that is combined with a specific customer solicitation:

(i) the qualified utility shall also include in its application information sufficient for the Commission to make the following determinations:

(A) that the solar solicitation and bid evaluation will create a level playing field that will allow fair competition between the qualified utility and other bidders;

(B) that, excluding applicable requirements of the qualified utility's federally regulated transmission function, interconnection and transmission related requirements and conditions will be equally applicable to the qualified utility and other bidders;

(C) that projects proposing to interconnect or deliver to various locations on the qualified utility's transmission system will have a fair opportunity to bid and have the impacts of the interconnection or delivery locations objectively considered in the selection process, provided that solicitation parameters requested by specific customers may limit interconnection or delivery locations; and

(D) that the solar solicitation is in the public interest.

(ii) the Commission will provide public notice of the application. Interested parties may file comments on the application within 30 days of the notice. Interested parties shall have 15 days to respond to any comments. The Commission will hold a scheduling conference to set the time for public hearing. Unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will set a hearing date that is within 75 days of the application.

(c) For an all customers large solicitation, including an all customers large solicitation that is combined with an all customers solicitation or a specific customer solicitation, or both:

(i) Parts 1 through 5 of the Energy Resource Procurement Act are applicable.

(ii) the qualified utility shall include all of the information required under subsection 3(1) of this rule in its application under R746-420.

(iii) in its application for Commission approval under R746-420 for an all customers large solicitation, the qualified utility shall also include in such application information sufficient for the Commission to make the following additional determinations:

(A) that the solar solicitation and bid evaluation will create a level playing field that will allow fair competition between the qualified utility and other bidders;

(B) that, excluding applicable requirements of the qualified utility's federally regulated transmission function, interconnection and transmission related requirements and conditions will be equally applicable to the qualified utility and other bidders;

(C) that projects proposing to interconnect or deliver to various locations on the qualified utility's transmission system will have a fair opportunity to bid and have the impacts of the interconnection or delivery locations objectively considered in the selection process, provided that solicitation parameters requested by specific customers may limit interconnection or delivery locations; and

(D) that the solar solicitation is in the public interest.

(iv) the Commission will provide public notice of the application. The process for approval of the application will be governed by the Energy Resource Procurement Act and R746-420.

(d) If no solar resource is selected at the conclusion of a solar solicitation approved by the Commission:

(i) the qualified utility shall file a report with the Commission within 30 days that includes the following:

(A) a summary of the results of the solar solicitation;

(B) the reasons for not acquiring the lowest cost solar resource bid into the solar solicitation; and

(C) any other information the Commission may require.

(ii) the Commission will provide public notice of the report. Interested parties may file comments regarding the qualified utility's report or the solar solicitation that resulted in such report within 30 days of the notice. Interested parties shall have 15 days to respond to any comments. After considering the report and information filed by the qualified utility and the comments received, the Commission may determine whether further comments, proceedings, or actions may be appropriate and in the public interest.

R746-450-4. Solar Resource Acquisition Approval Process.

(1) Before acquiring a solar resource selected through a specific customer solicitation approved under this rule:

(a) a qualified utility shall file an application for approval of the acquisition with the Commission that includes information sufficient for the Commission to make the following determinations:

(i) that the solicitation, bid evaluation and resource selection processes complied with these rules, other Commission rules, the Utah Code, and the Commission's order approving the solicitation process; and

(ii) that the acquisition of the solar resource is just and reasonable, and in the public interest.

(b) the Commission will provide public notice of the application and interested parties may file comments on the application within 30 days of the notice. Interested parties shall have 15 days to respond to any comments. The Commission will hold a scheduling conference to set the time for public hearing. Unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will set a hearing date that is within 75 days of the application.

(2) Combining applications for Commission approval:

(a) A qualified utility may combine its application for Commission approval of a specific customer solicitation with its application for Commission approval of the acquisition of a solar resource selected through that specific customer solicitation if the following conditions are met:

(i) all information required under R746-450-3(1) is included in the combined solicitation and acquisition approval application;

(ii) the qualified utility did not prepare or administer the specific customer solicitation, and was not involved in the evaluation or selection of the solar resource selected through that specific customer solicitation;

(iii) the specific customer solicitation is not combined with any other form of solicitation under these rules; and

(iv) the qualified utility's application for combined approval meets the requirements of both R746-450-3(2)(a) and R746-450-4(1).

(b) The Commission shall provide public notice of the application and interested parties may file comments on the application within 30 days of the notice. Interested parties shall have 15 days to respond to any comments. The Commission will hold a scheduling conference to set the time for public hearing. Unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will set a hearing date that is within 75 days of the application.

(3) Approval of an acquisition under an all customers large solicitation is also subject to Part 3 of the Energy Resource Procurement Act and must be approved in accordance with that Part 3 and R746-430 and these rules. An acquisition under an all customers solicitation is subject to Part 4 of the Energy

Resource Procurement Act and must be approved in accordance with that Part 4 and R746-440 and these rules.

(a) In an application for approval of an acquisition resulting from an all customers solicitation or an all customers large solicitation, in addition to the requirements of Part 3 and R746-430 or Part 4 and R746-440, the qualified utility shall include in such application information sufficient for the Commission to make the following determinations:

(i) that the solicitation, bid evaluation and resource selection processes complied with these rules, other Commission rules, the Utah Code and the Commission's order approving the solicitation process;

(ii) that the acquisition of the solar resource is just and reasonable, and in the public interest;

(iii) that the accounting treatment of the acquired solar resource proposed by the qualified utility in the application will be properly reflected in the qualified utility's accounting system, reports, energy balancing accounts, and for interjurisdictional allocations; and

(iv) that the qualified utility's acquisition of the solar resource at a competitive market price is the lowest cost ownership option, which will be based on:

(A) the solicitation criteria and the bid results; and

(B) information to be included in the application by the qualified utility that compares customer costs and benefits for acquisition of the solar resource using the competitive market price to the costs and benefits of the solar resource if it were treated as a traditional regulated resource included in rate base.

(b) The Commission will provide public notice of the application. The process for approval of the application will be governed by applicable provisions of the Energy Resource Procurement Act and Commission rules.

(4) If the Commission issues an order granting acquisition approval under this section R746-450-4, including entering into a power purchase agreement containing a purchase option by the qualified utility, using rate recovery based on a competitive market price:

(a) the prices approved by the Commission shall constitute competitive market prices; and

(b) assets owned by the qualified utility and used to provide service as approved under this section are not public utility property.

(5) Within six months following the date of a Commission order approving the acquisition of a solar resource pursuant to an all customers solicitation or an all customers large solicitation, or for such longer period as the Commission determines to be in the public interest a qualified utility may file an application with the Commission seeking approval to acquire another solar resource that is similar to the one for which a competitive market price was established without requiring a new solar solicitation approval process. For the purposes of this section, whether a solar resource is "similar" shall be determined based on the overall similarity between the solar resources after evaluating the following factors: resource size, capacity factor, technology type, resource location, contract term length, generation profile, reliability capabilities, transmission, and such other factors the Commission deems appropriate.

(a) The qualified utility's application shall also provide information sufficient to demonstrate that:

(i) there is a need to acquire the solar resource;

(ii) the competitive market price remains reasonable; and

(iii) the acquisition is in the public interest.

(b) The Commission shall provide public notice of the application. Interested parties may file comments on the application within 30 days of the notice. Interested parties shall have 15 days to respond to any comments. The Commission will hold a scheduling conference to set the time for public hearing. Unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will set a hearing date that is within 75 days of the application.

R746-450-5. Disposition of a Solar Resource.

(1) No later than 180 days before the end of the Commission approved term for a solar resource, the qualified utility shall file a request for determination that its intended retention or disposition complies with Utah Code Section 54-17-807(10). The filing shall demonstrate that the qualified utility's proposed retention or disposition will result in the qualified utility retaining the benefits and assuming the costs and risks of ownership of the solar resource. The Commission will provide public notice of such filing, and before approving the proposed retention or disposition of the solar resource will provide an opportunity for public input and hold a public hearing.

KEY: procedural and informational requirements, solar resource solicitations, solar resource acquisitions
December 24, 2018 54-17-807

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

(1) For purposes of this rule, "item" includes:

(a) an admission;

(b) a product transferred electronically;

(c) a service; and

(d) tangible personal property.

(2)(a) An invoice or receipt issued by a seller shall separately state the sales tax collected on the invoice or receipt.

(b) If an invoice or receipt issued by a seller does not show the sales tax collected as required in Subsection (2)(a), sales tax will be assessed on the seller or purchaser based on the amount of the invoice or receipt.

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:

(a) separately states the tax exempt items on the invoice; or

(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

(4) Unless otherwise provided by statute, if a purchase consists of two or more items that are subject to sales tax at different rates, the entire purchase is subject to sales tax at the higher tax rate unless the seller, at the time of the transaction:

(a) separately states on the invoice the items subject to sales tax at each of the different sales tax rates; or

(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items subject to sales tax at the lower tax rate.

(5) A seller that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the seller collected the excess or remit the excess to the commission.

(a) A seller may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

(b) A seller may not offset an underpayment of tax on the seller's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;

2. of a change of character of the business, or

3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;

2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;

3. the person fails to renew its annual business license with the Department of Commerce; or

4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

(1)(a) Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

(b) The return filed by a remote seller under Section 59-12-107(4) shall be the return the seller would have filed if the seller were not a remote seller.

(2) If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

(3) If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

(4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

(a) New businesses that expect annual sales and use tax liability less than $1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

(b)(i) Businesses currently assigned a quarterly filing status, in good standing and reporting less than $1,000 in tax for the preceding calendar year may be changed to annual filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c)(i) Businesses assigned an annual filing status reporting in excess of $1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of $1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to

Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or

2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output

procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (17).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;

2. the purchase price of the vehicle;

3. the value allowed for the trade-in vehicle;

4. the net difference between the vehicle traded and the vehicle purchased;

5. the signature of the seller; and

6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1) Fuel charges in a transaction for the lease or rental of a motor vehicle are not subject to sales tax pursuant to Subsection 59-12-104(1) if the fuel charges are:

(a) optional; and

(b) separately stated on the invoice.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

(a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and

(b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1)(a) "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

(b) This applies whether the charge made for the use of the

seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

(2) "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

(3) "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

(4) If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

(5) Annual membership dues may be paid in installments during the year.

(6) Amounts paid for the following activities are not admissions or user fees:

(a) lessons, public or private;

(b) sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

(c) sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

(1) Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

(2) Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

(3) Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Purchases by the State of Utah, Its Institutions, and Its Political Subdivisions Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-104.6.

(1) "Lodging related purchase" is as defined in Section 59-12-104.6.

(2) A purchase made by the state, its institutions, or its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts is exempt from tax if the purchase is for use in the exercise of an essential governmental function.

(3) A purchase is considered made by the state, its institutions, or its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with the employee's own funds and is reimbursed by the state or local entity, that purchase is not made by the state or local entity and does not qualify for the exemption.

(4) An entity that qualifies under Subsections (2) and (3) for an exemption from sales and sales-related tax on a lodging related purchase:

(a) may not receive that exemption at the point of sale; and

(b) may apply for a refund of tax paid on forms provided by the commission.

(5) An entity that applies for a refund of sales and sales-related tax paid under Subsection (4)(b) shall:

(a) retain a copy of a receipt or invoice indicating:

(i) the amount of sales and sales-related tax paid for each purchase for which a refund of tax paid is claimed; and

(ii) the purchase was paid for directly by the entity; and

(b) maintain original records supporting the refund request for three years following the date of the refund and provide those records to the commission upon request.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control

purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

(a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, or other

items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of

meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-

19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two $6 meals, but the value of the free meal is limited to $5, the $12 is rung up and the $5 deducted, resulting in a taxable sale of $7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for $8,500 and a credit of $6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or $2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed $1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers

Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Service Plan Charges for Labor and Repair Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) "Service plan" includes an extended warranty agreement or other prepaid arrangement.

(2)(a) Service plan charges for a future taxable repair are subject to sales tax.

(b) Sales tax must also be collected on any deductible charged to a customer for the customer's share of the repair done under the service plan.

(3)(a) Service plan charges for items of tangible personal property that are converted to real property are not taxable.

(b) Service plan charges for items of tangible personal property that are permanently attached to real property are treated as follows:

(i) service plan charges for labor are not taxable; and

(ii) service plan charges for parts are taxable unless those parts are exempt under Title 59, Chapter 12, Part 1, Tax Collection.

(4) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and

items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery, equipment, parts, and materials" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery, equipment, parts, and materials by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemption does not apply to purchases of items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery, equipment, parts, and materials are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery, equipment, parts, and materials used for a nonmanufacturing activity qualify for the exemption if the machinery, equipment, parts, and materials are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery, equipment, parts, and materials purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery, equipment, parts, and materials used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery, equipment, parts, and materials are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery, equipment, parts, and materials are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a $50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the $50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a $50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telecommunications Service Pursuant to Utah Code Ann. Section 59-12-103.

(1) Taxable telecommunications service charges include subscriber access fees.

(2) Nontaxable telecommunications charges include:

(a) refundable subscriber deposits, interest, and late payment penalties;

(b) charges for interstate calls;

(c) telecommunications answering services received or relayed by a human operator;

(d) charges to repair subscriber equipment that is regarded as real property; and

(e) charges levied on subscribers to fund or subsidize special telecommunications services, including 911 service, special communications services for the deaf, and special telecommunications service for low income subscribers.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors

Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-211.

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

(3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

(4)(a) The provisions for determining the location of a transaction under Subsection (4)(b) apply if:

(i) a purchaser uses computer software;

(ii) there is not a transfer of a copy of the computer software to the purchaser; and

(iii) the purchaser uses the computer software at more than one location.

(b) The location of a transaction described in Subsection (4)(a) is:

(i) if the seller is required to collect and remit tax to the commission for the purchase, and the purchaser provides the seller at the time of purchase a reasonable and consistent method for allocating the purchase to multiple locations, the location determined by applying that reasonable and consistent method of allocation; or

(ii) if the seller is required to collect and remit tax to the commission for the purchase , and the seller does not receive information described in Subsection (4)(b)(i) from the purchaser at the time of the purchase, the location determined in accordance with Subsections 59-12-211(4) and (5); or

(iii) if the purchaser accrues and remits sales tax to the commission for the purchase, the location determined:

(A) by applying a reasonable and consistent method of allocation; or

(B) in accordance with Subsections 59-12-211(4) and (5).

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Service Charges, Tips, Gratuities, Cover Charges, and Other Similar Charges Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on service charges, tips, gratuities, cover charges, or other similar charges included on a patron's bill that are required to be paid.

(b) Voluntary amounts left on the table or added to a credit card charge slip are not subject to sales tax.

(2) A service charge, tip, gratuity, cover charge, or other similar charge that a restaurant, cafe, club, private club, or similar business includes on a patron's bill is presumed to be required unless:

(a) language on the front of the bill states that the service charge, tip, gratuity, cover charge, or other similar charge is voluntary and may be increased or decreased by the patron; and

(b) the language described in Subsection (2)(a) is in the same font size as the service charge, tip, gratuity, cover charge, or other similar charge that the restaurant, cafe, club, private club, or similar business included on the bill.

(3) Charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

(a) inspected in this state; or

(b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

(1) Definitions.

(a) "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

(b) "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

(2) Except as provided in Subsection (3), the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

(3) If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

(4) The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

(5) An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

(6) A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

(7) A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the commission:

(a) on forms provided by the commission, and

(b) at the time and in the manner sales and use tax is remitted to the commission.

(8) A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

(a) the name and address of the user of the taxable energy;

(b) the volume of taxable energy delivered to the user; and

(c) the entity from which the taxable energy was purchased.

(9) The information required under Subsection (8) shall be provided to the commission:

(a) for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value; and

(b)(i) except as provided in Subsection (9)(b)(ii), at the time the person delivering the taxable energy files sales and use tax returns with the commission; or

(ii) if the person delivering the taxable energy files an annual information return under Subsection 10-1-307(5), at the time that annual information return is filed with the commission.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The $75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1)(a) Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

(2) Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

(3) The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

(a) medical services;

(b) boarding services; or

(c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) Graphic design services are not subject to sales and use tax:

(a) if the graphic design is the object of the transaction; and

(b) even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

(2) Except as provided in Subsection (3), if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

(a) there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

(b) the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

(3) A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

R865-19S-113. Sales Tax Obligations of Aircraft and Boat Tour Operators, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (2) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(3) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

A. "Clothing" includes:

1. aprons for use in a household or shop;
2. athletic supporters;
3. baby receiving blankets;
4. bathing suits and caps;
5. beach capes and coats;
6. belts and suspenders;
7. boots;
8. coats and jackets;
9. costumes;
10. diapers, including disposable diapers, for children and adults;
11. ear muffs;
12. footlets;
13. formal wear;
14. garters and garter belts;
15. girdles;
16. gloves and mittens for general use;

17. hats and caps;
18. hosiery;
19. insoles for shoes;
20. lab coats;
21. neckties;
22. overshoes;
23. pantyhose;
24. rainwear;
25. rubber pants;
26. sandals;
27. scarves;
28. shoes and shoe laces;
29. slippers;
30. sneakers;
31. socks and stockings;
32. steel toed shoes;
33. underwear;
34. uniforms, both athletic and non-athletic; and
35. wearing apparel.

B. "Clothing" does not include:
1. belt buckles sold separately;
2. costume masks sold separately;
3. patches and emblems sold separately;
4. sewing equipment and supplies, including:
a) knitting needles;
b) patterns;
c) pins;
d) scissors;
e) sewing machines;
f) sewing needles;
g) tape measures; and
h) thimbles; and
5. sewing materials that become part of clothing, including:
a) buttons;
b) fabric;
c) lace;
d) thread;
e) yarn; and
f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:
A. breathing masks;
B. clean room apparel and equipment;
C. ear and hearing protectors;
D. face shields;
E. hard hats;
F. helmets;
G. paint or dust respirators;
H. protective gloves;
I. safety glasses and goggles;
J. safety belts;
K. tool belts; and
L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:
A. ballet and tap shoes;
B. cleated or spiked athletic shoes;
C. gloves, including:
(i) baseball gloves;
(ii) bowling gloves;
(iii) boxing gloves;
(iv) hockey gloves; and
(v) golf gloves;
D. goggles;
E. hand and elbow guards;
F. life preservers and vests;
G. mouth guards;
H. roller skates and ice skates;
I. shin guards;
J. shoulder pads;
K. ski boots;
L. waders; and
M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

A. The computation of sales and use tax must be:
1. carried to the third place; and
2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:
1. item basis; or
2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:
1. monthly; and
2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:
1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and
2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

(a) land;
(b) buildings;
(c) raw materials;
(d) supplies;
(e) film;
(f) services;
(g) transportation;
(h) gas, electricity, and other fuels;
(i) admissions or user fees; and
(j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

(a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and

(b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(2) The exemption does not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery, equipment, parts, and materials are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery, equipment, parts, and materials used for non-qualifying activities are eligible for the exemption if the machinery, equipment, parts, and materials are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery, equipment, parts, and materials are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(2) The exemption for certain purchases by a web search portal establishment does not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery, equipment, parts, and materials are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery, equipment, parts, and materials used for non-qualifying activities are eligible for the exemption if the machinery, equipment, parts, and materials are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery, equipment, parts, and materials are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.

For purposes of determining the amount of sales tax due in specie legal tender and in dollars for a purchase made in specie legal tender, if the London fixing price is not available for a day on which a purchase is made in specie legal tender, a seller shall use the latest available London fixing price for the specie legal tender the purchaser paid that precedes the date of the purchase.

KEY: charities, tax exemptions, religious activities, sales tax
December 13, 2018 9-2-1702
Notice of Continuation November 10, 2016 9-2-1703
10-1-303
10-1-306
10-1-307
10-1-405
19-6-808
26-32a-101 through 26-32a-113
59-1-210
59-12
59-12-102
59-12-103
59-12-104
59-12-105
59-12-106
59-12-107
59-12-108
59-12-118
59-12-301
59-12-352
59-12-353

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(4)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

(1) Definitions.

(a) "Person" is as defined in Section 68-3-12.

(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

(c) "Unit operator" means a person who operates all producing wells in a unit.

(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;
(b) the address of the property; and
(c) the serial number of the property.
(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:
(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.
(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.
(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.
(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.
(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.
(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.
(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.
(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.
(i) All definitions contained in Section 11-13-103 apply to this rule.
(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.
(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.
(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.
(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:
(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.
(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.
(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.
(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.
(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.
(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.
(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.
(2) The ad valorem training and designation program consists of several courses and practica.
(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course 101 - Basic Appraisal Principles;

(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or

educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of

January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(11) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(12) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central

tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustmentsor other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b).(c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms

provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2019 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;
(vii) a snowmobile;
(viii) a street motorcycle;
(ix) a tent trailer;
(x) a travel trailer; and
(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;
(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and
(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.
(4) Other taxable personal property that is not included in the listed classes includes:
(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.
(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.
(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.
(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.
(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:
(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.
(i) Examples of property in the class include:
(A) barricades/warning signs;
(B) library materials;
(C) patterns, jigs and dies;
(D) pots, pans, and utensils;
(E) canned computer software;
(F) hotel linen;
(G) wood and pallets;
(H) video tapes, compact discs, and DVDs; and
(I) uniforms.
(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:
(A) retail price of the canned computer software;
(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.
(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
18	72%
17	42%
16 and prior	11%

(b) Class 2 - Computer Integrated Machinery.
(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:
(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.
(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.
(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.
(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.
(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.
(ii) Examples of property in this class include:
(A) CNC mills;
(B) CNC lathes;
(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.
(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
18	91%
17	81%
16	70%
15	59%
14	48%
13	38%
12	25%
11 and prior	13%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.
(i) Examples of property in this class include:
(A) office machines;
(B) alarm systems;
(C) shopping carts;
(D) ATM machines;
(E) small equipment rentals;
(F) rent-to-own merchandise;
(G) telephone equipment and systems;
(H) music systems;
(I) vending machines;
(J) video game machines; and
(K) cash registers.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
18	86%
17	70%
16	53%
15	35%
14 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.
(i) Examples of property in this class include:
(A) furniture;
(B) bars and sinks:

(C) booths, tables and chairs;
(D) beauty and barber shop fixtures;
(E) cabinets and shelves;
(F) displays, cases and racks;
(G) office furniture;
(H) theater seats;
(I) water slides;
(J) signs, mechanical and electrical; and
(K) LED component of a billboard.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
18	92%
17	84%
16	74%
15	64%
14	55%
13	45%
12	34%
11	23%
10 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.
(i) Examples of property in this class include:
(A) heavy duty trucks;
(B) medium duty trucks;
(C) crane trucks;
(D) concrete pump trucks; and
(E) trucks with well-boring rigs.
(ii) Taxable value is calculated by applying the percent good factor against the cost new.
(iii) Cost new of vehicles in this class is defined as follows:
(A) the documented actual cost of the vehicle for new vehicles; or
(B) 75 percent of the manufacturer's suggested retail price.
(iv) For state assessed vehicles, cost new shall include the value of attached equipment.
(v) The 2019 percent good applies to 2019 models purchased in 2018.
(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
19	90%
18	71%
17	66%
16	61%
15	56%
14	51%
13	45%
12	40%
11	35%
10	30%
09	20%
08	15%
07	10%
06 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.
(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.
(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.
Examples of machinery and equipment include:
(A) manufacturing machinery;
(B) amusement rides;
(C) bakery equipment;
(D) distillery equipment;
(E) refrigeration equipment;
(F) laundry and dry cleaning equipment;
(G) machine shop equipment;
(H) processing equipment;
(I) auto service and repair equipment;
(J) mining equipment;
(K) ski lift machinery;
(L) printing equipment;
(M) bottling or cannery equipment;
(N) packaging equipment; and
(O) pollution control equipment.
(ii) Medical and dental equipment is subject to a high degree of technological development by the health industry. Examples of medical and dental equipment include:
(A) medical and dental equipment and instruments;
(B) exam tables and chairs;
(C) microscopes; and
(D) optical equipment.
(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
(iv)(A) Notwithstanding Subsection (6)(g)(iii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iv)(B):
(I) VGO (Vacuum Gas Oil) reactor;
(II) HDS (Diesel Hydrotreater) reactor;
(III) VGO compressor;
(IV) VGO furnace;
(V) VGO and HDS high pressure exchangers;
(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
(VII) VGO, amine, SWS, and HDS separators and drums;
(VIII) VGO and tank pumps;
(IX) TGU modules; and
(X) VGO tank and VGO tank air coolers.
(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iv)(A) shall be calculated by:
(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
(II) multiplying the product described in Subsection (6)(g)(iv)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
18	94%
17	87%
16	79%
15	71%
14	64%
13	56%
12	47%
11	38%
10	30%
09	21%
08 and prior	11%

(h) Class 9 - Off-Highway Vehicles.
(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.
(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the

developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
18	96%
17	91%
16	84%
15	78%
14	73%
13	68%
12	60%
11	54%
10	48%
09	42%
08	35%
07	28%
06	20%
05 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

(A) data processing equipment;

(B) personal computers;

(C) main frame computers;

(D) computer equipment peripherals;

(E) cad/cam systems; and

(F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
18	62%
17	46%
16	21%
15	9%
14 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

(A) construction equipment;

(B) excavation equipment;

(C) loaders;

(D) batch plants;

(E) snow cats; and

(F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2019 model equipment purchased in 2018 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
18	49%
17	47%
16	44%
15	42%
14	39%
13	37%
12	35%
11	32%
10	30%
09	28%
08	25%
07	23%
06	20%
05 and prior	13%

(m) Class 14 - Motor Homes.

(i) Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

(A) crystal growing equipment;

(B) die assembly equipment;

(C) wire bonding equipment;

(D) encapsulation equipment;

(E) semiconductor test equipment;

(F) clean room equipment;

(G) chemical and gas systems related to semiconductor manufacturing;

(H) deionized water systems;

(I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
18	47%
17	34%
16	24%
15	15%
14 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

(A) billboard (excluding LED component);

(B) sign towers;

(C) radio towers;

(D) ski lift and tram towers;

(E) non-farm grain elevators;

(F) bulk storage tanks;

(G) underground fiber optic cable;

(H) solar panels and supporting equipment; and

(I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
18	96%
17	94%
16	89%
15	85%
14	82%
13	79%
12	73%
11	69%
10	64%
09	63%
08	59%
07	57%
06	51%
05	45%
04	38%
03	30%

02	23%
01	15%
00 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

(A) houseboats equal to or greater than 31 feet in length;

(B) sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2019 percent good applies to 2019 models purchased in 2018.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
19	90%
18	67%
17	64%
16	62%
15	60%
14	57%
13	55%
12	53%
11	50%
10	48%
09	46%
08	43%
07	41%
06	39%
05	36%
04	34%
03	32%
02	29%
01	27%
00	25%
99	21%
98 and prior	17%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

(A) oil and gas exploration equipment;

(B) distillation equipment;

(C) wellhead assemblies;

(D) holding and storage facilities;

(E) drill rigs;

(F) reinjection equipment;

(G) metering devices;

(H) cracking equipment;

(I) well-site generators, transformers, and power lines;

(J) equipment sheds;

(K) pumps;

(L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
18	95%
17	87%
16	81%
15	74%
14	67%
13	61%
12	55%
11	46%
10	40%
09	34%
08	27%
07	19%
06 and prior	10%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

(A) dry freight van trailers;

(B) refrigerated van trailers;

(C) flat bed trailers;

(D) dump trailers;

(E) livestock trailers; and

(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2019 percent good applies to 2019 models purchased in 2018.

(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
19	95%
18	85%
17	82%
16	78%
15	74%
14	69%
13	65%
12	61%
11	57%
10	53%
09	50%
08	46%
07	41%
06	36%
05	30%

04	25%
03 and prior	17%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

(A) walls and partitions;
(B) plumbing and roughed-in fixtures;
(C) floor coverings other than carpet;
(D) store fronts;
(E) decoration;
(F) wiring;
(G) suspended or acoustical ceilings;
(H) heating and cooling systems; and
(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
18	94%
17	88%
16	82%
15	77%
14	71%
13	65%
12	59%
11	54%
10	48%
09	42%
08	36%
07 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;
(B) aircraft parts manufacturing molds;
(C) aircraft parts manufacturing patterns;
(D) aircraft parts manufacturing taps and gauges; and
(E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
18	86%
17	70%
16	53%
15	36%
14	19%
13 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

(A) electrical power generators; and
(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
18	97%
17	95%
16	92%
15	90%
14	87%
13	84%
12	82%
11	79%
10	77%
09	74%
08	71%
07	69%
06	66%
05	64%
04	61%
03	58%
02	56%
01	53%
00	51%
99	48%
98	45%
97	43%
96	40%
95	38%
94	35%
93	32%
92	30%
91	27%
90	25%
89	22%
88	19%
87	17%
86	14%
85	12%
84 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of $1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
18	75%
17	50%
16	25%
15 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2019.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

(a) the owner of record of the property;

(b) the property parcel, account, or serial number;

(c) the location of the property;

(d) the tax year in which the exemption was originally granted;

(e) a description of any change in the use of the real or personal property since January 1 of the prior year;

(f) the name and address of any person or organization conducting a business for profit on the property;

(g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

(h) a description of any personal property leased by the owner of record for which an exemption is claimed;

(i) the name and address of the lessor of property described in Subsection (2)(h);

(j) the signature of the owner of record or the owner's authorized representative; and

(k) any other information the county may require.

(3) The annual statement shall be filed:

(a) with the county legislative body in the county in which the property is located;

(b) on or before March 1; and

(c) using:

(i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

(ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

(i) company homes occupied by superintendents and other employees on 24-hour call;

(ii) storage facilities for railroad operations;

(iii) communication facilities; and

(iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

(i) land leased to service station operations;

(ii) grocery stores;

(iii) apartments;

(iv) residences; and

(v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the

notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to

Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(A) the owner of record of the property;

(B) the property parcel number;

(C) the location of the property;

(D) the basis of the owner's knowledge of the use of the property;

(E) a description of the use of the property;

(F) evidence of the domicile of the inhabitants of the property; and

(G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

(A) on a form provided by the county; or

(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2019 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	677
2)	Cache	582
3)	Carbon	451
4)	Davis	719
5)	Emery	427
6)	Iron	683
7)	Kane	357
8)	Millard	674
9)	Salt Lake	616
10)	Utah	641
11)	Washington	557
12)	Weber	694

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	595
2)	Cache	497
3)	Carbon	359
4)	Davis	633
5)	Duchesne	417
6)	Emery	344
7)	Grand	332
8)	Iron	599
9)	Juab	380
10)	Kane	275
11)	Millard	592
12)	Salt Lake	529
13)	Sanpete	460
14)	Sevier	484
15)	Summit	393
16)	Tooele	381
17)	Utah	554
18)	Wasatch	416
19)	Washington	475
20)	Weber	608

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	514
2)	Box Elder	468
3)	Cache	376
4)	Carbon	239
5)	Davis	509
6)	Duchesne	292
7)	Emery	216
8)	Garfield	181
9)	Grand	210
10)	Iron	475
11)	Juab	256
12)	Kane	152
13)	Millard	468
14)	Morgan	328
15)	Piute	285
16)	Rich	152
17)	Salt Lake	403
18)	San Juan	146
19)	Sanpete	338
20)	Sevier	360
21)	Summit	269
22)	Tooele	255
23)	Uintah	316
24)	Utah	425
25)	Wasatch	289
26)	Washington	349
27)	Wayne	281
28)	Weber	483

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	424
2)	Box Elder	387
3)	Cache	292
4)	Carbon	153
5)	Daggett	162
6)	Davis	425
7)	Duchesne	205
8)	Emery	134
9)	Garfield	97
10)	Grand	127
11)	Iron	389
12)	Juab	170
13)	Kane	68
14)	Millard	380
15)	Morgan	243
16)	Piute	199
17)	Rich	70
18)	Salt Lake	312
19)	San Juan	66
20)	Sanpete	254
21)	Sevier	276
22)	Summit	185
23)	Tooele	174
24)	Uintah	234
25)	Utah	341
26)	Wasatch	206
27)	Washington	263
28)	Wayne	198
29)	Weber	395

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	586
2)	Box Elder	634
3)	Cache	586
4)	Carbon	586
5)	Davis	639
6)	Duchesne	586
7)	Emery	586
8)	Garfield	586
9)	Grand	586

10)	Iron	586
11)	Juab	586
12)	Kane	586
13)	Millard	586
14)	Morgan	586
15)	Piute	586
16)	Salt Lake	586
17)	San Juan	586
18)	Sanpete	586
19)	Sevier	586
20)	Summit	586
21)	Tooele	586
22)	Uintah	586
23)	Utah	644
24)	Wasatch	586
25)	Washington	693
26)	Wayne	586
27)	Weber	639

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	218
2)	Box Elder	216
3)	Cache	223
4)	Carbon	113
5)	Daggett	134
6)	Davis	226
7)	Duchesne	143
8)	Emery	118
9)	Garfield	89
10)	Grand	115
11)	Iron	225
12)	Juab	130
13)	Kane	93
14)	Millard	166
15)	Morgan	168
16)	Piute	163
17)	Rich	90
18)	Salt Lake	198
19)	Sanpete	167
20)	Sevier	172
21)	Summit	173
22)	Tooele	158
23)	Uintah	177
24)	Utah	214
25)	Wasatch	179
26)	Washington	195
27)	Wayne	147
28)	Weber	259

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	47
2)	Box Elder	79
3)	Cache	100
4)	Carbon	42
5)	Davis	44
6)	Duchesne	47
7)	Garfield	41
8)	Grand	42
9)	Iron	42
10)	Juab	44
11)	Kane	41
12)	Millard	40
13)	Morgan	55
14)	Rich	41
15)	Salt Lake	47
16)	San Juan	45
17)	Sanpete	47
18)	Summit	41
19)	Tooele	45
20)	Uintah	47
21)	Utah	43
22)	Wasatch	41
23)	Washington	41
24)	Weber	68

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	14
2)	Box Elder	50
3)	Cache	70
4)	Carbon	13
5)	Davis	13
6)	Duchesne	16
7)	Garfield	13
8)	Grand	13
9)	Iron	13
10)	Juab	13
11)	Kane	13
12)	Millard	12
13)	Morgan	23
14)	Rich	13
15)	Salt Lake	15
16)	San Juan	17
17)	Sanpete	16
18)	Summit	13
19)	Tooele	13
20)	Uintah	16
21)	Utah	13
22)	Wasatch	13
23)	Washington	12
24)	Weber	38

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	65
2)	Box Elder	63
3)	Cache	60
4)	Carbon	45
5)	Daggett	45
6)	Davis	52
7)	Duchesne	59
8)	Emery	61
9)	Garfield	66
10)	Grand	67
11)	Iron	64
12)	Juab	56
13)	Kane	65
14)	Millard	65
15)	Morgan	57
16)	Piute	77
17)	Rich	56
18)	Salt Lake	61
19)	San Juan	63
20)	Sanpete	54
21)	Sevier	56
22)	Summit	62
23)	Tooele	61
24)	Uintah	69
25)	Utah	56
26)	Wasatch	45
27)	Washington	56
28)	Wayne	75
29)	Weber	60

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	20
2)	Box Elder	20
3)	Cache	19
4)	Carbon	13
5)	Daggett	12
6)	Davis	16
7)	Duchesne	16
8)	Emery	18
9)	Garfield	20
10)	Grand	19

11)	Iron	19
12)	Juab	16
13)	Kane	21
14)	Millard	21
15)	Morgan	18
16)	Piute	22
17)	Rich	17
18)	Salt Lake	18
19)	San Juan	21
20)	Sanpete	15
21)	Sevier	15
22)	Summit	17
23)	Tooele	17
24)	Uintah	24
25)	Utah	20
26)	Wasatch	14
27)	Washington	18
28)	Wayne	24
29)	Weber	17

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	15
2)	Box Elder	14
3)	Cache	12
4)	Carbon	11
5)	Daggett	10
6)	Davis	11
7)	Duchesne	12
8)	Emery	12
9)	Garfield	13
10)	Grand	13
11)	Iron	13
12)	Juab	12
13)	Kane	13
14)	Millard	13
15)	Morgan	11
16)	Piute	15
17)	Rich	11
18)	Salt Lake	13
19)	San Juan	14
20)	Sanpete	12
21)	Sevier	12
22)	Summit	12
23)	Tooele	12
24)	Uintah	16
25)	Utah	12
26)	Wasatch	11
27)	Washington	11
28)	Wayne	15
29)	Weber	12

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	5
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	5
9)	Garfield	5
10)	Grand	5
11)	Iron	5
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	5
16)	Piute	5
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	5
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	5

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land		
1)	All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any

revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior March 1 through September 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior September 16 through the last day of February, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the

Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are

not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without

undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;
(II) economic conditions; or
(III) similar circumstances.
(C) Growth may not be attributed to assets not in place as of the lien date.
(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.
(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.
(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.
(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.
(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.
(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.
(a) Cost Regulated Utilities.
(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:
(A) subtracting intangible property;
(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and
(C) adding any taxable items not included in the utility's net plant account or rate base.
(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.
(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.
(b)(i) Railroads.
(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.
(c) Airlines, air charter services, and air contract services.
(i) For purposes of this Subsection (6)(c):
(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;
(B) "airline" means an:
(I) airline under Section 59-2-102;
(II) air charter service under Section 59-2-102; and
(III) air contract service under Section 59-2-102;
(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and
(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.
(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.
(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.
(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.
(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.
(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.
(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:
(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);
(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and
(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.
(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.
(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:
(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);
(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and
(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.
(B) Value estimates from an aircraft pricing guide under

Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a

decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by

aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals
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Notice of Continuation November 10, 2016 9-2-201
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
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59-2-703
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59-2-801
59-2-918 through 59-2-924
59-2-1002
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59-2-1006
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59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1308.5
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59-2-1703

R909. Transportation, Motor Carrier.
R909-2. Utah Size and Weight Rule.
R909-2-1. Purpose and Applicability.

The purpose of this rule is to protect and preserve Utah's highway infrastructure, enhance safety, and facilitate commerce. All commercial motor vehicle operators, and motor carriers engaged in the movement of over dimensional and overweight vehicles and loads must comply with permit conditions as specified in the Utah Size and Weight rule. These conditions apply to all over dimensional vehicles and loads.

R909-2-2. Authority.

This rule is enacted under the authority of Sections 41-1a-231, 41-1a-1206, 72-1-201, 72-7-402, 72-7-404, 72-7-406, 72-7-407, 72-9-301, and 72-9-502.

R909-2-3. Definitions.

(1) "Appurtenance" as defined in CFR 23-658 and Section 72-7-402.

(2) "Articulated vehicle" consists of two or more vehicles that are connected by a joint that can pivot.

(3) "Automobile transporter" is any vehicle combination designed and used for the transport of assembled highway vehicles, including truck camper units. An automobile transporter shall not be prohibited from the transport of cargo or general freight on a backhaul, so long as it complies with weight limitations for a truck tractor and semitrailer combination.

(4) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(5) "Cargo or cargo carrying length" means the total length of a combination of trailers or load measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including all coupling devices.

(6) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(7) "Commercial vehicle" is as defined in Utah Code Section 72-9-102.

(8) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(9) "Department" means the Utah Department of Transportation.

(10) "Divisible load" a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(11) "Division" means the Motor Carrier Division.

(12) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(13) "Dromedary unit" is a truck-tractor capable of carrying a load independent of a trailer. Units manufactured prior to December 1, 1982 are exempt as a truck-trailer.

(14) "Emergency vehicle" means a vehicle designed to be used under emergency conditions: to transport personnel and equipment; and to support the suppression of fires and mitigation of other hazardous situations.

(15) "Fixed axle" means an axle that is not steerable, self-steering or retractable.

(16) "Flagger" is a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(17) "Full trailer" a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(18) "High-risk motor carrier" is a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC's at or above the "all other" motor carrier threshold.

(19) "Highway" any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(20) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(21) "Incidental" means transportation that occurs occasionally or by chance but does not exceed a distance of 20 miles.

(22) "Interstate system" means any highway designated as an interstate or freeway. For the purpose of this rule: I-15, I-215, I-80, I-70, US 89 between I-84 and I-15 and SR 201 between I-15 and I-80 will be considered interstate.

(23) "Laden" means carrying a load.

(24) "Longer combination vehicle" or an LCV is a combination of truck, truck tractor, semi-trailer and trailers, which exceeds legal dimensions and operates on highways by permit for transporting divisible loads.

(25) "Longer combination vehicle authority" means an authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(26) "Manufactured home" a transportable factory-built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(27) "Manufactured mobile home" means a transportable factory-built housing unit built prior to June 15, 1976, in accordance with a state mobile home code, which existed prior to the Federal Manufactured Housing and Safety Standards Act.

(28) "Motor carrier" as defined in Utah Code Section 72-9-102.

(29) "MVR" means motor vehicle record.

(30) "MUTCD" means Manual on Uniform Traffic Control Devices.

(31) "Multi-trip" means two or more daily or a minimum of 10 weekly trips in the proximity of a port-of-entry.

(32) "Natural gas vehicle" means the vehicle's engine is fueled primarily by natural gas.

(33) "Non-divisible" any load or vehicle exceeding applicable length, width, or height or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment.

(34) "Out-of-service" is a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(35) "Pole trailer" every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and is

ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(36) "Port-of-entry by-pass permit" allows a motor carrier a temporary permit that would allow by-pass of a designated port of entry.

(37) "Quad axle group" means a group of four consecutive fixed axles.

(38) "Recreational vehicle" is a vehicle or vehicles that are driven solely as family or personal conveyances for non-commercial purposes.

(39) "Retractable axle" is an axle which can be mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

(40) "Rocky mountain doubles" a tractor and two trailers, consisting of a long and a short trailer.

(41) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the proceeding vehicle or vehicles.

(42) "Secondary highway" is all other routes not designated as interstate or freeway. Two-lane, two-way highways are synonymous with secondary highways.

(43) "Semi trailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(44) "Special event" means the movement of an over-dimensional load or vehicle.

(45) "Special mobile equipment" or an SME means a vehicle or vehicles exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic; and is only incidentally operated or moved over the highways.

(46) "Special truck equipment" or STE means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as cement pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(47) "Spread axle" is two single axles that exceed 96 inches apart.

(48) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(49) "Tillerman/Steerman" is an individual who steers any axle of an articulated trailer.

(50) "Towaway trailer transporter combination" means a combination of vehicles consisting of a trailer transporter towing unit and 2 trailers or semitrailers.

(51) "Trailer transporter towing unit" means a power unit that is not used to carry property when operating in a towaway trailer transporter combination.

(52) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(53) "Triple trailer" means a tractor and three trailers of approximately equal length.

(54) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(55) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(56) "Trunnion axle" an axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle.

(57) "Trunnion axle group" two or more consecutive trunnion axles that are attached to the vehicle by a weight equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

(58) "Turnpike doubles" means a tractor and two trailers of equal length.

(59) "UCR" means Unified Carrier registration.

(60) "Un-laden" means a vehicle is not carrying a load.

(61) "Variable load suspension axle" or VLS is an axle that can be adjusted mechanically to various weight bearing capacities and can also be mechanically raised and lowered.

(62) "Vehicle" every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

R909-2-4. Legal Size Vehicle Dimensions.

(1) Maximum legal vehicle dimensions, laden and un-laden, that may be operated without special permits on Utah Highways:

(a) height: 14 feet

(b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions

TABLE 1

Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor vehicle	45 feet	Measured from bumper to bumper.
Semi-Trailer	53 feet	A trailer may not exceed 53 feet.
Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stinger-steered Automobile Transporter	80 feet or less	Stinger-steered Automobile transports are measured from bumper to bumper and may have a front overhang of 4 feet or less and a rear overhang of 6 feet or less, with a maximum vehicle length of 80 feet or less (excluding overhangs).
Saddle Mount	97 feet	This will allow a maximum of three saddle mount vehicles, one power unit and one full mount.
Truck trailer combination	65 feet	Measured from bumper to bumper.
Dromedary unit	65 feet	Truck tractor, unloaded box deck and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related Security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates. US highways and reasonable access routes without requiring a permit. Reasonable access means to the Interstate or US highway system.
All other combinations including recreational vehicles	65 feet	Measured from bumper to bumper.
Overhang	3 feet	Overhang may not carry any load

	front 6 feet rear	extending more than 3 feet beyond the front of the power unit or more than 6 feet beyond the rear of the bed or body of the vehicle.
Drawbar	15 feet	The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.
Commercial delivery of light and lbs; or	82 feet or less	Consisting of a trailer transporter towing unit and 2 trailers or semitrailers with a total weight medium duty not to exceed 26,000 and in trailers which the trailers semitrailers carry no property and constitute inventory property of a manufacturer, distributer, or dealer of such trailers or semitrailers, may have an overall length limitation of 82 feet or less on a towaway trailer transporter combination.

R909-2-5. Legal Weight Limitations.

(1) The maximum gross and axle weight limitations are noted in Table 2 and may not be operated at more than:

TABLE 2

Maximum Gross and Axle Weight Limitations

Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	must comply with bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations listed in Table 2.

(3) The weight limitation in Table 2 does not apply to a covered heavy-duty tow and recovery vehicle.

(4) Emergency vehicles may exceed the weight limits (up to a maximum gross vehicle weight of 86,000 pounds) of less than - 24,000 pounds on a single steering axle; 33,500 pounds on a single drive axle; 62,000 pounds on a tandem axle; or 52,000 pounds on a tandem rear drive steer axle.

(5) A natural gas vehicle may exceed any vehicle weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by any amount that is equal to the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system.

R909-2-6. Tire Load Provisions.

(1) Except for steering axles, self-steering VLS and retractable axles, or wide based tires, that are 14 inches wide or greater as indicated by the manufacturer's sidewall rating, all axles weighing more than 11,000 pounds shall have at least four tires per axle.

(a) For example: A tridem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width, will be allowed 33,000 pounds. A tandem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width will be allowed 22,000 pounds. All axles in the group must be duals or super singles to be allowed maximum weight.

(2) In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine maximum tire width:

(a) for non-permitted or legal vehicles, no tire shall exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring a Divisible overweight permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires that are greater than 11 inches but less than 14 inches shall have a weight limit not to exceed 5500 pounds;

(d) tires less than 11 inches wide shall not exceed 450 pounds per inch of tire width; and

(e) except as provided in R909-2-6, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

R909-2-7. Variable Load Axles.

(1) Vehicles with variable load axles are limited as follows:

(a) no more than three fixed axles shall be allowed in any group;

(b) retractable or variable load suspension axles installed after January 1990 shall be self-steering on power units or when augmenting a tridem group on trailers;

(i) Non-divisible loads may be exempt from these restrictions upon written approval from the division.

(c) no axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements, or the manufacturer's tire rating; and

(d) Controls for raising or lowering retractable or VLS axles may be located in the cab of the power unit. The pressure regulator valve shall be positioned outside of the cab and be inaccessible from the driver's compartment.

R909-2-8. General Oversize or Overweight Provisions.

(1) Except when entering on Northbound I-15 at the St. George Port of Entry, Westbound I-80 at the Echo Port of Entry, and Eastbound I-80 at the Wendover Port of Entry, the appropriate permit must be obtained prior to operating within the State of Utah.

(2) Each oversize or overweight permit shall be carried in the vehicle or combination vehicles.

(a) The permit may be in paper or electronic format.

(3) The conditions that must be met to obtain an oversize or overweight permit are:

(a) the motor carrier complies with the financial responsibility obligations;

(b) the vehicle or vehicles must be properly registered;

(c) the driver or drivers are properly licensed with appropriate endorsements;

(d) the motor carrier complies with the Federal Motor Carrier Safety Regulations;

(e) the motor carrier complies with the Hazardous Material Regulations; and

(f) the motor carrier complies with the Unified Carrier Registration or UCR as required.

(4) Exception. Length limitations do not apply to combinations of vehicles operated at night by a public utility when required for emergency repair of public service facilities or properties, or when operated with an oversize or overweight permit.

(5) Liability of permittee. The applicant or permittee, as a condition for obtaining an oversize permit, shall assume all responsibility for crashes, including injury to any persons or damage to public or private property caused by their operations.

(6) Indemnity clause. The applicant or permittee must agree to indemnify and hold harmless the department from any and all claims resulting directly or indirectly from the operation and transportation of vehicles or combination of vehicles operating under an oversize or overweight permit.

R909-2-9. Transfer or Replacement of Permits.

(1) Division personnel may transfer permits from one vehicle to another up to two times per permit for a fee under the following conditions:

(a) annual and semi-annual permits may be transferred to another unit within the same company;

(b) the customer has sold or purchased a vehicle;

(c) lease changes from one company to another by providing evidence of permit ownership; or

(d) the vehicle has become disabled.

(2) A transfer permit will be issued with the same expiration date as the original permit.

R909-2-10. Permit Revocation, Suspension and Confiscation.

(1) Violations of any permit that may result in the revocation, suspension or confiscation of the permit include, but are not limited to:

(a) speeding or driving faster than the posted speed limit or the speed indicated on the permit;

(b) lane travel;

(c) weather;

(d) load securement;

(e) violations of the Federal Motor Carrier Safety Regulations; and

(f) violations of the Hazardous Material Regulations.

(2) Before a vehicle can be moved, it must be made legal, properly permitted and all the out-of-service violations corrected.

(3) Patterns of non-compliance at a carrier level may result in the following actions:

(a) civil penalties;

(b) suspension or revocation of permit privileges; or

(c) an order to cease and desist operations.

R909-2-11. Weather Travel Restrictions.

(1) No carrier shall operate a longer combination vehicle (LCV), a tractor trailer combination more than 81 feet cargo carrying length or a truck and two-trailer combination more than 92 feet measured bumper to bumper, when the following conditions exist:

(a) wind more than 45 m.p.h.;

(b) any accumulation of snow and ice on the roadway; or

(c) visibility less than 1,000 feet.

(2) No carrier shall operate an oversize vehicle or load more than 10 feet wide, 105 feet long, 10 feet front or rear overhang when the following conditions exist:

(a) any accumulation of snow and ice on the roadway; or

(b) visibility less than 1,000 feet.

R909-2-12. Curfew Congestion Restrictions.

(1) Unless otherwise authorized, travel is prohibited for loads or vehicles more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height, Monday thru Friday between 6 a.m. and 9 a.m. and between 3:30 p.m. and 6 p.m. mountain time on the following highways:

(a) all highways south of Perry Willard Interchange, I-15, Exit #357;

(b) all highways in Weber, Davis, and Salt Lake Counties;

(c) all highways in Utah County north of I-15, Exit #261;

(d) SR 68, North of mile post 16 in Utah County;

(e) I-80 East side of Salt Lake County mile post 139 to mile post 101 on the West side of Salt Lake County; and

(f) I-84 west of mile post 91.

(2) The division may authorize exceptions to the curfew congestion restrictions based on mitigating circumstances.

R909-2-13. Holiday Travel Restrictions.

(1) Travel is prohibited for loads more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height during the following holidays:

(a) Christmas Day;

(b) New Year's Day;

(c) Memorial Day;

(d) Independence Day;

(e) Labor Day; and

(f) Thanksgiving Day.

(2) Monday holidays and Monday observed holiday restrictions begin at 2:00 p.m. through midnight on the Friday prior to the holiday. Normal travel may resume from sunrise on Saturday through Sunday at midnight. Monday holiday restriction continues at 12:01 a.m. on Monday and ends Tuesday at sunrise.

(3) The division may authorize exceptions to the holiday travel restriction based on mitigating circumstances.

(4) The division may prohibit movement of oversize loads during days of anticipated high traffic volume such as those that occur during hunting seasons, other holidays, weather conditions, or special events.

R909-2-14. Night Time Restrictions.

(1) Loads exceeding the following dimensions are restricted to daylight hours except as provided in R909-2-15:

(a) 14 feet 6 inches high;

(b) 10 feet wide;

(c) 105 feet in length; or

(d) overhang of more than 10 feet.

R909-2-15. Night Time Travel Provisions.

(1) The movement of oversize loads at night will be allowed under the following conditions:

(a) loads may not exceed 12 feet wide on secondary highways, 14 feet wide on interstates, or 14 feet 6 inches high on all roadways;

(b) loads exceeding 10 feet wide, 105 feet overall length, or 10 feet front or rear overhang are required to have one certified pilot escort on interstate highways and two on all secondary highways;

(i) Exception. A tow truck towing vehicles with a total length of 120 feet or 10 feet wide may travel during hours of darkness and does not require a pilot escort.

(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and

(d) night time travel authorization does not supersede adverse weather conditions.

(2) The division may authorize exceptions to the night time travel provisions based on mitigating circumstances.

R909-2-16. Oversize Divisible Load Provisions.

(1) An oversize permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) the height of the combination or load does not exceed 14 feet 6 inches;

(b) the width of the combination or load does not exceed 8 feet 6 inches;

(c) in multiple trailer combinations, a lighter trailer may not be placed in front of a heavier trailer when the weight difference is greater than 4000 pounds; and

(d) drawbars exceeding 15 feet in length shall be marked with retro-reflective tape on half of the entire length of the drawbar on both the left and right side of the drawbar.

(i) The drawbar shall display an amber light visible from both the right and left side of the drawbar located near the center of the drawbar.

R909-2-17. Oversize Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions;

(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:

(i) 14 feet 6 inches in height,

(ii) 14 feet 6 inches in width, and

(iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads that exceed the weights identified in this section, R909-2-17.

(3) Bulldozer blades, loader buckets or similar equipment exceeding 16 feet in width shall be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on all public highways may be allowed under the following terms and conditions:

(a) the permittee shall notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

(c) permittee must request authorization through the online system at least 48 hours in advance of the movement;

(d) permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

(e) the permittee will assume all costs when a certified police escort or escorts are required.

(5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and 150 feet in length.

(a) Loads exceeding 10 feet wide and 150 feet long shall purchase a single trip permit.

R909-2-18. Oversize Non-Divisible Load Provisions Requiring Pilot Escort Vehicles.

(1) One pilot vehicle is required for vehicles or loads that exceed the following dimensional conditions:

(a) 12 feet in width on secondary highways for non-interstate, and 14 feet in width on divided highways for interstates;

(b) 105 feet in length on secondary highways and 120 feet in length on divided highways;

(c) tow trucks that measure 165 feet or more in length; and

(d) overhangs of more than 20 feet shall have a pilot escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot escort vehicles are required for vehicles or loads which exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways;

(b) 16 feet in width on divided highways;

(i) mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot escort vehicles assigned as specified; or

(c) 120 feet in length on secondary highways;

(d) 16 feet in height on all highways; or

(e) when otherwise required by the division.

R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.

(1) Police escorts are required for vehicles with loads which exceed:

(a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

(b) 20 feet wide or 17 feet 6 inches high on all highways; or

(c) All loads more than 175 feet in length must have a minimum of one police escort;

(d) All loads more than 200 feet in length will require a minimum of two police escorts.

(2) The division may require police escorts based on extenuating circumstances.

R909-2-20. Oversize Non-Divisible Load Lighting, Signing and Flag Requirements.

(1) Oversize non-divisible load lighting:

(a) warning lights required when headlights are necessary;

(b) front overhang of more than three feet shall be marked with a steady, amber marker light and red flag;

(c) rear overhang exceeding four feet shall be marked with red clearance lights for night travel;

(d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and shall be displayed at a minimum height of four feet above ground;

(e) tow vehicle headlights shall be operated on low beam, day or night, as an additional warning to traffic; and

(f) night time travel, when authorized by the division may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

(2) Oversize non-divisible load sign requirements. Non-divisible oversize loads exceeding 10 feet in width, 14 feet 6 inches in height and 105 feet in length shall display an "OVERSIZE LOAD" sign, to warn the motoring public that extra-large vehicles are in operation. Signs must:

(a) be 7 feet by 18 inches;

(b) have a yellow background with 10-inch-high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

(c) be impervious to moisture;

(d) have front signs mounted on front bumper or on top of vehicle cab with letters presented toward the front of the vehicle;

(e) have rear signs positioned at the rear most part of the Vehicle or load as feasible, ensuring in all cases that the load does not obstruct the view of the sign;

(f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

(g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are always clearly legible;

(h) be covered, removed or placed face down when the vehicle is not engaged in an oversize movement; and

(i) oversize loads signs are not required on LCVs.

(3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on all extremities when:

(a) vehicle or load exceeds 10 feet in width;

(b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

(c) flags shall be completely clean and not torn, faded, or worn out and shall be fastened to wave freely; and

(d) over dimensional flagging is not required on LCVs.

(4) Tow trucks that exceed 120 feet in length are required to:

(a) display one sign on rear most of towed vehicle.

(i) the sign must have a yellow background with 10 inch high black letters that are painted with 1 5/8 inches wide stroke to read: "IN-TOW LONG LOAD"; and

(ii) be 4 feet by 2 feet minimum.

R909-2-21. Convoys.

(1) The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the division with the following conditions:

(a) the number of permitted vehicles in the convoy shall not exceed two;

(b) loads may not exceed 12 feet wide or 150 feet overall length;

(c) distance between vehicles shall not be less than 500 feet or more than 700 feet;

(d) distance between convoys shall be a minimum of one mile;

(e) all convoys shall have a certified pilot escort in the front and rear with proper signs;

(f) police escorts or department personnel may be required;

(g) convoys must meet all lighting requirements;

(h) convoys are restricted to freeway and interstate systems; and

(i) approval for convoys or night time travel may be obtained by contacting the division, and exceptions may be granted by the division on a case by case basis.

R909-2-22. Trailers More Than 53 to 57 Feet in Length.

Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semiannual or annual permit. Trailers more than 53 feet must have LCV authority to purchase semi-annual and annual permits.

R909-2-23. Longer Combination Vehicles.

(1) Motor Carriers operating longer combination vehicles or LCV's must apply and be approved to operate on designated routes on Utah's interstate system.

(2) Authorized motor carriers may operate interstate LCV's with a cargo or cargo carrying length as follows:

(a) a tractor trailer or tractor trailer combination more than 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination more than 92 feet not to exceed 95 feet in length, 14 feet 6 inches in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet 6 inches, may not be transported on LCV's; and

(b) acceptable travel conditions exist in accordance with hazardous conditions for loads more than 81 feet cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet, but requires LCV authority when exceeding 88 feet up to 92 feet.

(5) A dromedary unit when exceeding legal length may be permitted up to 88 feet.

(6) LCV's and double trailers exceeding 81 feet cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

R909-2-24. Overweight Divisible Load Provisions.

(1) An overweight divisible load permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) The vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds;

(b) The width of the vehicle does not exceed 8 feet 6 inches wide or 14 feet 6 inches high;

(c) All axles weighing more than 11,000 pounds are required to have at least four tires per axle except for steering axles, self-steering variable load suspension or retractable axles, or wide base single tires, that are 14 inches or greater as indicated by the manufacturer's sidewall rating.

(2) Overweight divisible load options are:

(a) dual tires on all axles;

(b) super wide single tires that are 14 inches wide or greater;

(c) not to exceed 11,000 pounds per axle;

(d) the axle, groups of axles, and GVW do not exceed the bridge formula $W = 500(LN/(N-1) + 12N+36)$; and

(e) all axles in the group must be duals or super singles to be allowed maximum authorized weight.

(3) The combination unit will conform to the bridge formula and the legal axle and gross vehicle weight limits.

(4) A divisible load permit may not be used to transport a non-divisible load.

(a) Exception. An overweight non-divisible load may operate with a divisible overweight permit provided the axle, gross and bridge limitations do not exceed those specified on the permit.

R909-2-25. Overweight Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions; and

(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.

(2) Actual weight must comply with the bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36).

(3) A permit for a non-divisible load may not be used to transport a divisible load.

(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semiannual trip, or annual trip basis as described in Table 3:

TABLE 3

Single Trip, Semi-Annual Permits allowed up to:

Single Axle	29,000 pounds
Tandem Axle	50,000 pounds
Tridem Axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross Weight	125,000 pounds

(5) Tow trucks must be properly registered to purchase annual, semi-annual or single trip permits if they exceed legal weight limitations.

(a) The properly registered and/or permitted weight of the towed vehicle is not calculated in the tow trucks towed vehicles gross combined weight.

(b) Tow trucks must be properly registered and permitted for weight of tow truck and any additional weight placed upon it.

(c) If the towed weight is not properly registered and/or permitted, the towing vehicle will be responsible for the permitting and registration requirements of the towed vehicle.

(6) Vehicles transporting milk products may exceed the gross weight limit of 80,000 pounds or the maximum weight allowed by the Federal Bridge Formula. This requires an appropriate non-divisible permit issued by the Department.

(a) Milk products being carried using multiple trailers will be required to abide by divisible requirements and do not get the non-divisible exception.

R909-2-26. Overweight Non-Divisible Loads Exceeding 125,000 Pounds Gross or Axle Weights.

(1) Loads exceeding 125,000 pounds gross, or axle weights in R909-2-24, may only purchase single trip permits.

(2) Axle, bridge, and gross weight allowances will be determined based on the non-divisible bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36) or in accordance with the bridge table.

(3) 9 feet wide axles are allowed 7.5% more weight than

9 feet wide axles.

(4) 10 feet wide axles are allowed 15% more weight than 8 feet wide axles.

(5) When using an axle equipped with eight tires, rather than four, add 10% to the weight authorized for an 8-foot-wide axle group.

(6) All tires shall comply with the manufacturer's tire load rating as indicated on the tire side wall.

(7) All STE operations must have a STE profile sheet when the axle limitations specified in Table 3 or bridge table are exceeded.

R909-2-27. Mobile and Manufactured Homes.

(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:

(a) all trailer axles shall be equipped with operational brakes; and

(b) axle and suspensions shall not exceed manufacturer's capacity rating.

(2) Paneling requirements of the open sides of a mobile manufactured home:

(a) a rigid material of 0.5-millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing must fully enclose the open sides of the units in transit.

(3) Rear mounted stop and turn signal lights shall be a minimum 6 inches in diameter with a type 35 red reflector lens.

(a) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported, will not require tail, brake, or signal lights mounted on the structures as certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn or stop.

(4) Two safety chains shall be used, one each on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

(5) Tow Vehicles. Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches;

(b) cab-over engine tow vehicles shall have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle shall be arranged so that the driver can see the entire length of both sides of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes more than 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit more than 12 feet wide.

R909-2-28. Pilot Escort Requirements and Certification Program.

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card by an authorized qualified certification program as outlined in this section, and shall have it in their possession at all times while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during movement of oversize loads;

(f) a pilot escort driver may not perform as a tillerman/steerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations that weighs more than 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or on-line re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

(d) When a driver is denied pilot escort driving privileges for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals shall be handled by a steering committee created by the division.

(e) The steering committee shall have the powers granted to the deputy director in R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in R907-1.

(4) Pilot escort vehicle standards.

(a) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs and properly registered and licensed as required under Utah Code Sections 41-1a-201 and 41-1a-401.

(b) Equipment shall not reduce visibility or mobility of pilot escort vehicle while in operation.

(c) Trailers may not be towed at any time while in pilot escort operations.

(d) Pilot escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(ii) When operating with police escorts a CB radio is required.

(e) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an " OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8-inch-high by 1-inch wide black letters. Solid is defined as when being viewed from the front or rear at a 90-degree angle, no light can transmit through;

(c) the sign for the front pilot escort vehicle shall be displayed so it is always clearly legible and readable by oncoming traffic; and

(d) the rear pilot escort vehicle shall display its sign so it is readable by traffic overtaking from the rear and clearly legible at all times.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division. Requirements are as follows:

(a) two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation;

(b) an AAMVA approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle. This beacon light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation; and

(c) incandescent, strobe or diode lights may be used provided they meet the above criteria.

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles shall be equipped with the following safety items:

(a) standard 18-inch or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs. For nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by items (c) or (d);

(c) eight red-burning flares, glow sticks or equivalent illumination device approved by the division;

(d) three orange 18-inch-high cones;

(e) a flashlight with a minimum 1 1/2-inch lens diameter, with extra batteries or charger. An emergency type shake or crank flashlight will not be allowed;

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic;

(g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations. Class 3 safety vests are required for nighttime travel moves;

(h) a height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height;

(i) a fire extinguisher;

(j) a first aid kit that is clearly marked;

(k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;

(l) one serviceable spare tire, tire jack and lug wrench;

(m) a handheld two-way simplex radio or other compatible form of communication for operations outside pilot escort vehicles; and

(n) vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles shall be equipped with the following safety items:

(a) all officers must have a CB radio to communicate with the pilot and transport vehicles;

(b) officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form;

(c) officers shall verify that all pilot escorts are in possession of current pilot escort inspections, or they shall complete an inspection prior to load movement;

(d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and

(e) officers shall be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) Driver shall possess a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than $750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle operator of the escort duties required by the regulations. Such insurance or endorsement, as applicable, must always be maintained during the term of the pilot escort certification.

(b) Pilot escort vehicles shall have a minimum amount of $750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A co-ordination and planning meeting shall be held prior to load movement. The drivers carrying or pulling the oversize loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public utility company representatives shall attend as required. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) the person designated as being in charge such as a department representative or a law enforcement officer;

(b) all documentation for authorized routing and permit conditions is distributed to all appropriate individuals involved in the move;

(c) communication and signals coordination;

(d) permitted dimensions will be verified with measurement of load dimensions; and

(e) copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions prior to all load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by R909-2-28, may control and direct traffic to stop, slow or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

(a) assume the proper flagger position outside the pilot

escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;

(b) use "STOP" and "SLOW" paddles or a 24-inch red or florescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.

(1) Application process. Application to become a third-party pilot escort trainer or instructor shall be made on a form furnished by the division, and shall include the following:

(a) name and address of entity;

(b) list of instructors;

(c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;

(d) a copy of entity's business license;

(e) sample of digital image certification card that will be issued to students upon completion of the course;

(f) sample of "Flagger" certification card that will be issued to students upon completion of the course;

(g) procedural guidelines that outline security measures implemented to safeguard student's personal information; and

(h) copies of all course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that all requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the UDOT Motor Carrier Division Customer Service/Superload team at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

(a) division rules governing over-size load movements;

(b) pilot escort operations;

(c) flagging maneuvers for over dimensional loads;

(d) oversize or overweight load movement, coordination, planning and communication requirements and best practices;

(e) pilot escort vehicle positioning and situational training;

(f) rail grade crossing safety;

(g) routing techniques, including pre-trip surveys; and

(h) insurance coverage requirements and liability issues.

(3) Testing procedures.

Testing materials shall be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course and structured as follows:

(a) 12 Fill in the blank;

(b) 12 Multiple choice;

(c) 12 true and false questions;

(d) one to six questions dealing with safety equipment;

(e) one to four questions dealing with the duties of pilot escort drivers;

(f) one to six questions dealing with maintenance of equipment; and

(g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. Entity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) When a contract is terminated with the third-party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of all students that have completed the course.

(8) Applicant Recertification Procedures.

(a) Entity shall provide means in which an individual may be re-certified either by mail or the internet.

(b) Entity shall submit written procedures documenting the process for the examination that will allow the applicant re-certification. The examination shall not be a duplicate of the examination used during the initial certification process and should be constructed as to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests shall be structured as outlined in R-909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in R909-2-29.

(b) If an entity has its authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals shall be handled by a steering committee created by the division.

(ii) The steering committee shall have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

(a) rates;

(b) fees;

(c) procedures; and

(d) the certification process established by the entity whenever the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions shall maintain the following certification and recertification records for a period of eight years:

(a) student's name, address, and contact information;

(b) driver's license number, original MVR and original proof of insurance information from insurance provider;

(c) copy of each student's written exam;

(d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on all students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and recertification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process whenever the division deems it necessary to insure compliance with this rule.

(b) The loss, mutilation or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by affidavit stating the date such records were lost, mutilated, or destroyed, and the circumstances involving such loss, mutilation, or destruction.

(c) All records must be retained by the entity for eight years, except for the computerized file, which is to be kept permanently, during which time the entity shall be subject to inspection by the division during reasonable business hours. If the entity goes out-of-business, the permanent record shall be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) All records, including computerized records, must be provided to the division when requested for an audit or review of the entities records. Failure to provide all records as requested by the division is a violation of this rule.

(f) Entities shall maintain accurate, up to date records.

R909-2-30. Farmers, Implements of Husbandry and Agricultural Operations.

(1) Vehicle combinations for hay truck operations may transport two rolls or bales of hay side by side when:

(a) the two rolls or bales are 10 feet or less in combined width;

(b) the load is being operated with a valid non-divisible oversize permit;

(c) oversize loads exceeding 8 feet 6 inches may not be transported on double trailers exceeding 61 feet cargo or cargo carrying length;

(d) the load must meet all other divisible load requirements in R909-2-24; and

(e) loads are properly secured.

(2) Implements of husbandry moved by a farmer, rancher, or his employees in connection with an agricultural operation must comply with:

(a) every farm tractor and towed farm equipment, towed or self-propelled implements of husbandry, designed for operation at speeds not more than 25 miles per hours, must always be equipped with a slow-moving vehicle emblem mounted on the rear; and

(b) every farm tractor and every self-propelled implement of husbandry manufactured or assembled after January 1970 shall be equipped with vehicular hazard warning lights visible from a distance not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

R909-2-31. Snow Plow Operations.

(1) Blades more than 8 feet 6 inches must be equipped with a yellow, rotating beacon warning light.

(2) Snow plows with up to 12 feet wide blades may operate without oversize permits, when they comply with:

(a) lights which provide adequate illumination when the blade is in either the up, or down position;

(b) signaling lights shall not be obscured; and

(c) blades must be angled so that the minimum width is exposed to oncoming traffic during periods of travel between jobs.

R909-2-32. Parade Floats.

(1) Parade floats are not required to obtain an overweight or oversize permit, but they must meet the following requirements:

(a) all floats must have sufficient proof of insurance;

(b) all floats must carry the necessary safety equipment for the safe operation of the vehicle during movement;

(c) the float driver must have a clear 360-degree visibility;

(d) movement to and from parades should be made only during daylight hours unless the vehicle is adequately lighted and there is minimal congestion; and

(e) floats more than 14 feet 6 inches in height, must be routed by the division.

R909-2-33. Transportation of Utility Poles.

(1) Utility poles may be transported up to 120 feet in overall length, including overhangs, with single trip, semi-annual or annual permit in accordance with:

(a) oversize load restrictions;

(b) pilot escort requirements;

(c) travel restrictions; and

(d) signing and lighting requirements.

(2) Permits are issued to the trailer transporting the poles using the trailer registration information.

(a) Upon company request, the permit may be issued to the truck or truck tractor.

(b) Utility poles exceeding 120 feet shall purchase a single trip, non-divisible oversize permit.

R909-2-34. Special Mobile Equipment.

(1) Special mobile equipment or SME refers to vehicles:

(a) not designed or used primarily for the transportation of persons or property;

(b) not designed to operate in traffic; and

(c) only incidentally operated or moved over the highways.

(2) Special mobile equipment exempt from registration includes:

(a) farm tractors; and

(b) off road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, trenchers, and ditch digging apparatus.

(3) Heavy equipment designed for off-highway uses such as scrapers, loaders, off highway cranes, and rock trucks, but not tracked vehicles may be issued single trip permits to operate under their own power, on approved routes other than interstate highways, as follows:

(a) the distance traveled shall not generally exceed 20 miles;

(b) only daylight operations are authorized, and all oversize restrictions apply;

(c) weights must comply with the bridge formula for non-divisible loads;

(d) single axles equipped with single tires shall not be authorized to exceed 40,000 pounds;

(e) a minimum of one pilot escort vehicle is required; and

(f) special mobile equipment shall be routed by the division.

(4) Special mobile equipment or SME affidavit. All persons who operate or cause to operate an SME exempt from registration shall submit a completed special mobile equipment affidavit to the division.

(a) To be deemed complete, an affidavit must be on the form provided by the division and all required fields filled in. Affidavits will be available at all ports of entry. Affidavits shall be turned into a port of entry.

(b) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times;

(c) Vehicles that are not special mobile equipment shall register with the Utah State Tax Commission prior to operating the vehicle on a public highway.

(d) Upon receipt of a denial of special mobile equipment, if the owner or operator wishes to appeal the decision of the division, a petition may be filed with the department, within 30 days.

(i) A response to an appeal from the department will be made in writing within 30 days.

R909-2-35. Special Truck Equipment.

(1) The following vehicle configurations are considered special truck equipment:

(a) concrete pumper trucks;

(b) cranes or trucks performing crane service with a crane lift capacity of five tons or more; and

(c) well boring trucks.

(2) Vehicles classified as special truck equipment may be issued an oversize or overweight permit when exceeding legal dimensions.

(a) An approved profile sheet for special truck equipment shall be carried in the vehicle with the permit, when the axle limitations specified in R909-2-5 Table 2 or actual bridge or gross are exceeded.

(3) Vehicles classified as special truck equipment are eligible for a 50 % registration fee reduction.

R909-2-36. Port-of-Entry By-Pass Permit Provisions.

(1) A temporary by-pass permit may be issued to accommodate the multi-trip highway transportation needs to motor carriers who meet the following criteria:

(a) Motor carriers shall meet the "Multi-trip" definition to receive and maintain by-pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis, if the motor carrier is able to demonstrate that denial of a by-pass permit will cause a hardship if the vehicle must be diverted to a port-of-entry.

(b) The basis for qualification to participate in the by-pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic scores equal to or greater than the intervention thresholds noted in Table 4 for General, HM and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by-pass program.

(ii) A carrier is not eligible for a by-pass permit when the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4

High Risk Motor Carrier Criteria

BASIC	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by-pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by-pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary to carry out state and federal law.

(e) Vehicles that obtain by-pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, unit-specific information, and destination.

(2) By-pass applications shall be submitted to the division.

(a) By-pass privilege carriers must re-apply yearly.

(b) Subcontractors operating under their own authority must apply for by-pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by-pass criterion is met to maintain privileges.

(d) By-pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by-pass decal, specific to each individual vehicle, and will receive a by-pass certificate that shall be carried in the vehicle.

(4) By-pass privileges may be granted to carriers traversing multiple ports of entry within the same route.

(5) Authorized by-pass routes are allowed for the following Port of Entries:

(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;

(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and all vehicles must clear the St. George Port of Entry;

(c) Perry Port of Entry may be by-passed and travel on Highway 89 between Brigham City and Ogden; and

(d) Monticello Port of Entry may be by-passed on US-191 with empty vehicles only.

(6) By-pass privileges may be revoked or suspended should a carrier fail to meet the safety standards as set forth in the:

(a) Compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;

(b) Federal Motor Carrier Safety Regulations;

(c) size and weight limitations;

(d) by-pass zone routes; and

(e) out-of-service criteria.

(7) When an application for a by-pass permit is denied the motor carrier may file an appeal.

(a) The appeal shall be handled by the division hearing officer.

(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

R909-2-37. Annual Review of Permit Regulations and Conditions.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in April of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the division of these issues by March 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be incorporated into this rule.

KEY: permits, safety regulations, size and weight, trucks

December 12, 2018 **72-1-201**

Notice of Continuation June 16, 2014 **72-7-406**

72-9-303

41-1a-102

41-1a-231

41-1a-1206

72-7-402

72-7-404
72-7-407
72-9-301
72-9-502

R909. Transportation, Motor Carrier.
R909-3. Standards for Utah School Buses.
R909-3-1. Authority and Purpose.

This rule is enacted under authority of Section 41-6a-1304 and 41-6a-1309 for the purpose of governing the design and operation of school buses and governing the placement of advertisements on school buses.

R909-3-2. Adoption of Standards for Utah School Buses and Operations Standards 2010 Edition.

(1) In Cooperation with the Utah State Office of Education and the Department of Public Safety, The Standards for Utah School Buses and Operations and Appendix as contained in the 2010 Edition, is incorporated by reference, except for Part, "Finance, School District".

(a) The Standards for Utah School Buses and Operations is published by the Utah State Office of Education and can be found at http://www.schools.utah.gov/finance/DOCS/Transportation/2010-BusStandards.aspx.

(b) The 2010 Standards Appendix is published by the Utah State Office of Education and can be found at http://www.schools.utah.gov/finance/DOCS/Transportation/2010-StandardsAppendix.aspx.

(2) These requirements apply to the design and operation of all school buses in this state when:

(a) owned and operated by any school district;

(b) privately owned and operated under contract with a school district; or

(c) privately owned for use by a private school.

R909-3-3. Advertisement on School Buses.

(1) In addition to the restrictions listed in Section 41-6a-1309 advertisements placed on a bus may not:

(a) cover, obscure or interfere with the operation of any required lighting, reflective tape, emergency exits or any other safety equipment;

(b) be placed within six inches of any required markings, lighting or other required safety equipment;

(c) resemble a traffic control device; or

(d) be illuminated or be constructed of reflective material.

KEY: school buses, safety
August 25, 2011 41-6a-1304
Notice of Continuation December 27, 2018

R920. Transportation, Operations, Traffic and Safety.
R920-30. State Safety Oversight.
R920-30-1. Regulatory Authority.

The purpose of this rule is to incorporate by reference the Federal Transit Administration standards for State Safety Oversight (04/15/2016). This rule is authorized or required by 49 U.S.C. 5330; 49 CFR 659; 49 CFR 674; Utah Code Sections 72-1-201, 72-1-208, and 72-1-214.

R920-30-2. Purpose and Scope.

(1) This rule, R920-30, establishes the standard of the State of Utah oversight required to implement the provisions of 49 U.S.C. 5329(e), 49 U.S.C. 5330, and 49 CFR Part 674, Rail Fixed Guideway Systems, State Safety Oversight.

(2) This rule applies to the Utah Transit Authority ("UTA"), the public transportation agency operating rail fixed guideway systems in the State of Utah.

(3) The Utah Department of Transportation (the "Department") exercises jurisdiction over safety of equipment and operations of the UTA pursuant to Utah Code Section 72-1-214. In addition, pursuant to 49 CFR Part 674, the Department has authority to investigate any allegation of noncompliance with the Public Transportation Agency Safety Plan.

(4) Pursuant to 49 CFR Part 674, the Department is responsible for establishing minimum standards for rail safety practices and procedures to be used by the UTA. The Department's program standard is consistent with the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, and the rules for Public Transportation Agency Safety Plans. The Department also must oversee the execution of these practices and procedures to ensure compliance with the provisions of 49 CFR Part 674.

(5) Where revisions to this rule, R920-30, are necessary, the Department will conduct a rulemaking proceeding, in accordance with the Utah Administrative Rulemaking Act, Utah Code Sections 63G-3-101-702.

(6) The Department and the UTA must operate as legally and financially independent entities.

(7) The Department does not and must not employ any individual who is also responsible for administering or providing services to the UTA.

(8) The Department will submit an annual report summarizing the oversight activities related to the UTA of the safety of the rail fixed guideway system to the Federal Transit Administration and the Governor as required by 49 CFR Part 674.

R920-30-3. Public Transportation Agency Safety Plan.

(1) The UTA shall develop and implement a written Public Transportation Agency Safety Plan (PTASP) that conforms to the requirements of 49 CFR Part 673, Public Transportation Agency Safety Plan within two calendar years after publication of 49 CFR Part 673.

(2) Prior to the development and implementation of its PTASP, the UTA shall continue to maintain, update, and implement its written System Safety Program Plan (SSPP) pursuant to 49 CFR Part 659 (April 29, 2005), which is incorporated by reference.

(3) The UTA shall submit the SSPP or PTASP to the Department for review and approval prior to its implementation. The SSPP or PTASP should be submitted in electronic format via email to the Department. Supporting procedures and referenced materials may be submitted in hard copy, by fax, mail, email, or in-hand delivery.

(4) The UTA shall submit an updated SSPP or PTASP, and any accompanying procedures, for Department review and approval on or before February 1st of each year. If no updates are required, the UTA shall so notify the Department in writing before February 1st of each year.

(5) Should the UTA update the SSPP or PTASP outside the annual review cycle, either upon its own initiative or upon the written request of the Department for modifications to the SSPP or PTASP, the UTA shall submit a revised SSPP or PTASP to the Department. The SSPP or PTASP should be submitted in electronic format via email to the Department within 30 calendar days of the event requiring the changes. Supporting procedures and referenced materials may be submitted in hard copy, by fax, mail, email, or in-hand delivery.

R920-30-4. Incorporation by Reference of Federal Regulation.

The Federal Transit Administration, State Safety Oversight, Final Rule, Title 49 CFR Part 674 (eff. April 15, 2016) as it applies to the management of the State Safety Oversight Program, is incorporated by reference as the minimum standard for state safety oversight of rail fixed guideway systems in Utah.

KEY: state safety oversight, transit, safety
December 12, 2018 **72-1-201**
72-1-208
72-1-214

R926. Transportation, Program Development.
R926-11. Clean Fuel Vehicle Decal Program.
R926-11-1. Purpose and Authority.

(1) As authorized in Utah Code Sections 41-6a-702 and 72-6-121 this rule establishes procedures for regulating access to high occupancy vehicle lanes by vehicles with a clean fuel vehicle decal regardless of the number of occupants.

(2) United States Code Title 23, Subsection 166(b) authorizes states to allow the use of high occupancy vehicle (HOV) lanes by inherently low emission vehicles (ILEV) and low emission and energy-efficient vehicles with only a single occupant. United States Code Title 23, Subsection 166(d) requires a state to limit or discontinue the use of these single-occupant vehicles if the presence of such vehicles has degraded the operation of the HOV facility.

R926-11-2. Definitions.

(1) "Hybrid" means a Low Emission and Energy Efficient vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code Section 166.

(2) "ILEV" means an Inherently Low Emission Vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code Section 166(b).

(3) "C Decal" means a clean vehicle radio frequency identification transponder issued by the department.

(4) "C Sticker" means a clean vehicle sticker issued by the department.

(5) "C Permit" means a permit issued by the department to the owner of an eligible ILEV or Hybrid vehicle.

(6) "Department" means the Utah Department of Transportation.

(7) "HOV" means a highway lane that has been designated for the use of high occupancy vehicles pursuant to Utah Code Section 41-6a-702.

R926-11-3. Permitting of Eligible Vehicles.

(1) Owners of an eligible ILEV and Hybrid vehicle registered in the state of Utah shall qualify for a C Decal, C Sticker, and C Permit upon application to the Department under permitting processes and payment of a fee defined under this rule.

(2) The owner of a vehicle issued a C Decal, C Sticker, and a C Permit is prohibited from placing the C Decal, and C Sticker on any vehicle other than the vehicle for which the Department has issued a C Decal and C Permit. Posting a C Decal on a vehicle other than the vehicle for which the Department has issued a C Decal, C Sticker, and C Permit will render the vehicle owner ineligible to participate in the Clean Fuel Vehicle Program.

(3) The owner of a vehicle issued a C Decal and C Sticker must have in the person's immediate possession the C Permit issued by the Department for that vehicle.

(4) The C Decal must be placed in the windshield of the vehicle, centered near the rearview mirror and 4 inches from the top of the windshield. If the vehicle has an AS-1 line, the C Decal must be mounted below the line. The C Decal must be mounted directly onto the windshield and cannot be mounted with tape or any other device.

(5) The C Sticker must be placed on the vehicle's right side on the rear of the vehicle in the upright position. The C Sticker must be placed using the sticker's adhesive backing and cannot be affixed with tape or any other device.

(6) The Department shall maintain and publish a listing online of all ILEV and Hybrid vehicle makes and models eligible for a C Decal, C Sticker, and C Permit.

(7) The Department will charge a fee for the issuance of a C Decal and C Sticker. The amount of the fee will be posted on the application in the amount established by the Department in accordance with Utah Code Section 63J-1-504.

(8) The Department may restrict use of the HOV facility by single-occupant vehicles with C Decals and C Stickers if the operation of the facility becomes degraded. For the purposes of this rule, an HOV facility is considered degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed of 45 miles per hour 90 percent of the time over a consecutive 180 day period, during morning or evening weekday peak hour periods (or both).

R926-11-4. Issuance of C Decals and C Permits.

(1) Except as set forth in subsection (2), the Department may not issue more than 6,000 C Permits and their associated C Decals and C Stickers.

(2) Not more frequently than once a year, the Department may evaluate the operation of the HOV facility and determine whether the facility will continue to operate at an acceptable level of service. For the purposes of this rule, an HOV facility is considered to be operating at an acceptable level of service if vehicles operating on the facility are maintaining a minimum average operating speed of 55 miles per hour 90 percent of the time over a consecutive 180 day period, during morning or evening weekday peak hour periods (or both). Based on that evaluation and if the Department determines that additional single-occupant vehicles with a C Decal may operate in the HOV lane without compromising operation of the facility, the Department may increase the number of clean fuel decals issued beyond the minimum set forth in subsection R926-11-4(1) and shall issue the appropriate number of C Decals to eligible applicants as set forth under subsection R926-11-4(5).

(3) Vehicle owners with an eligible ILEV or Hybrid vehicle as defined by this rule must submit an application to the Department for a C Decal, C Sticker and C Permit. The application, approved and issued by the Department, shall contain the vehicle owner's name, the license plate number, the vehicle identification number, and the ILEV or Hybrid vehicle make and year model as a condition for obtaining a C Decal, C Sticker and C Permit.

(4) A vehicle owner must pay the fee for the issuance of a C Decal, C Sticker, and C Permit within 30 days of the application being approved. If the owner does not pay the fee within 30 days, the application will be closed. After the application is closed, a vehicle owner must submit a new application for a C Decal, C Sticker, and C Permit.

(5) If more applications for C Decals, C Stickers, and C Permits are received than the total number the Department may issue at any one time, C Decals, C Stickers, and C permits will be offered to applicants in the order that applications are approved as C Decals become available. The number of available C Decals will be published on the C Decal website.

KEY: hybrid vehicles, C Decals, C Stickers, C Permits
August 23, 2017 41-6a-702
Notice of Continuation December 14, 2018 72-6-121

R940. Transportation Commission, Administration.
R940-3. Procedures for Transportation Infrastructure Loan Fund Assistance.
R940-3-1. Purpose and Authority.

This rule is enacted under the provisions of Section 72-2-203. The purpose of this rule is to establish procedures and standards for making loans and assistance through the Transportation Infrastructure Loan Fund.

R940-3-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in Utah Code Ann. Section 72-1-301;

(2) "Department" means the Utah Department of Transportation, which is created in Utah Code Ann. Section 72-1-201;

(3) "Fund" means the Transportation Infrastructure Loan Fund, which is created in Utah Code Ann. Section 72-2-202;

(4) "Assistance" means infrastructure assistance defined in Utah Code Ann. 72-2-201;

(5) "Loan" means infrastructure loan defined in Utah Code Ann. 72-2-201;

(6) "Transportation project" has the same meaning as defined in Utah Code Ann. 72-2-201;

(7) "Qualified request" means any request submitted by a public entity for assistance or a loan:

(a) that has been received and reviewed by the department;

(b) that has been submitted by the department to the commission for review with a recommendation from the department to accept or reject the request;

(c) for a transportation project that is on the Statewide Transportation Improvement Program;

(8) "Public entity" has the same meaning as defined in Utah Code Ann. 72-2-201.

R940-3-3. Commission Responsibilities.

The commission shall:

(a) receive and review all qualified requests for assistance or loans through the fund;

(b) approve assistance or loans provided by the department through the fund;

(c) approve the terms of assistance or loans, including interest rates and repayment;

(d) prioritize requests for assistance or loans based on:

(i) the availability of monies in the fund;

(ii) the merits of each qualified request as determined by the commission including, but not limited to, the ability to repay the loan, management of the project, the need for the transportation project and the public benefit.

R940-3-4. Conditions for Assistance or Loans.

The commission shall approve or reject qualified requests submitted by the department during a commission meeting held under 72-1-302, including the terms for repayment. Any subsequent amendments or alterations made to the terms for repayment must be approved by the commission. Repayment of loans must be completed no more than 10 years from the time the loan is executed. If a transportation project is funded with federal funds, all federal regulations must be followed.

KEY: infrastructure assistance, Transportation Infrastructure Loan Fund
January 12, 2009 72-2-203
Notice of Continuation December 14, 2018